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OFFICIAL REPORT

OF THE

DEBATES AND PROCEEDINGS

IN THE

CONSTITUTIONAL CONVENTION

OF THE

State of Nevada,

ASSEMBLED AT CARSON CITY, JULY 4TH, 1864,

TO

FORM A CONSTITUTION AND STATE GOVERNMENT.

ANDREW J. MARSH, OFFICIAL REPORTER.

SAN FRANCISCO:
FRANK EASTMAN, PRINTER.
1866.

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NOTE BY THE REPORTER.

The preparation and publication of the volume of Debates and Proceedings has been very much delayed, by causes beyond the control of the Reporter or Printer; and the work is now presented, from necessity, without the contemplated introductory pages, the committee appointed by the Convention to prepare an introduction, embracing a brief outline of the history of the Territory of Nevada, not having performed that duty in season. The volume is respectfully submitted to the people of Nevada, with a full consciousness on the part of the Reporter that he has discharged faithfully, and to the utmost of his ability, every duty devolved upon him, in connection with its preparation, revision, and indexing. He takes this occasion to return his sincere thanks to all the members of the Convention for their cordial and friendly coöperation.

ANDREW J. MARSH,
Official Reporter.

San Francisco, Cal., November, 1866.

ACT OF CONGRESS.

ORGANIZING THE TERRITORY OF NEVADA.

An Act to Organize the Territory of Nevada.

(Approved March 2, 1861.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the following limits, to wit:—Beginning at the point of intersection of the forty-second degree of north latitude with the thirty-ninth degree of longitude west from Washington; thence running south on the line of said thirty-ninth degree of west longitude, until it intersects the northern boundary line of the Territory of New Mexico; thence due west to the dividing ridge separating the waters of Carson Valley from those that flow into the Pacific; thence on said dividing ridge northwardly to the forty-first degree of north latitude; thence due north to the southern boundary line of the State of Oregon; thence due east to the place of beginning—be, and the same is hereby, erected into a temporary Government, by the name of the Territory of Nevada; *provided*, that so much of the territory within the present limits of the State of California, shall not be included within this Territory until the State of California shall assent to the same, by an act irrevocable without the consent of the United States; *provided, further*, that nothing in this Act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Nevada, until said tribe shall signify their assent to the President of the United States, to be included within the said Territory, or to affect the authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the Government to make if this Act had never passed; *provided, further*, that nothing in this Act contained shall be construed to inhibit the Government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion thereof to any other Territory or State.

SEC. 2. *And be it further enacted*, That the Executive power and authority in and over said Territory of Nevada shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of Superintendent of Indian Affairs, and shall approve all laws passed by the Legislative Assembly before they shall take effect; he may grant pardons for offenses against the laws of said Territory, and reprieves for offenses against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be

appointed to office under the laws of said Territory, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a Secretary of said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his Executive Department; he shall transmit one copy of the laws and one copy of the Executive proceedings, on or before the first day of December in each year, to the President of the United States, and at the same time two copies of the laws to the Speaker of the House of Representatives and the President of the Senate, for the use of Congress; and in case of the death, removal, or resignation, or other necessary absence of the Governor from the Territory, the Secretary shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the Governor, during such vacancy or necessary absence, or until another Governor shall be duly appointed to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of said Territory shall be vested in the Governor, and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of nine members, which may be increased to thirteen, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall consist of thirteen members, which may be increased to twenty-six, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the Council and of the House of Representatives, giving to each section of the Territory representation in the ratio of its population, (Indians excepted,) as nearly as may be; and the members of the Council and of the House of Representatives shall reside in, and be inhabitants of the district for which they may be elected, respectively. Previous to the first election, the Governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the Territory to be taken; and the first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and he shall, at the same time, declare the number of the members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this Act. The number of persons authorized to be elected having the highest number of votes in each of said Council Districts for members of the Council, shall be declared by the Governor to be duly elected to the Council; and the person or persons authorized to be elected having the greatest number of votes for the House of Representatives, equal to the number to which each county or district shall be entitled, shall be declared by the Governor to be elected members of the House of Representatives; *provided*, that in case of a tie between two or more persons voted for, the Governor shall order a new election, to supply the vacancy made by such tie. And the persons thus elected to the Legislative Assembly, shall meet at such place and on such day as the Governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representations, in the several counties or districts, to the Council and House of Representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly; *provided*, that no one session shall exceed the term of forty days, except the first, which may be extended to sixty days, but no longer.

SEC. 5. *And be it further enacted*, That every free white male inhabitant of the United States above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this Act, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters, and of holding office at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly; *provided*, that the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared on oath their intention to become such, and shall have taken an oath to support the Constitution of the United States.

SEC. 6. *And be it further enacted*, That the

Legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States, and the provisions of this Act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents; nor shall any law be passed impairing the rights of private property; nor shall any discrimination be made in taxing different kinds of property; but all property subject to taxation shall be in proportion to the value of the property taxed.

SEC. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed, or elected, as the case may be, in such manner as shall be provided by the Governor and Legislative Assembly of the Territory. The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for: and, in the first instance, the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly, and shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers.

SEC. 8. *And be it further enacted*, That no member of the Legislative Assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except Postmasters, shall be a member of the Legislative Assembly, or shall hold any office under the Government of said Territory.

SEC. 9. *And be it further enacted*, That the Judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace. The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of Government of said Territory annually, and they shall hold their offices during the period of four years. The said Territory shall be divided into three Judicial Districts, and a District Court shall be held in each of said districts by one of the Justices of the Supreme Court, at such time and place as may be prescribed by law; and the said Judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the Probate Courts and of the Justices of the Peace, shall be as limited by law; *provided*, that Justices of the Peace shall not have jurisdiction of any matter in controversy when the title of boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said Supreme and District Courts, respectively, shall possess chancery as well as common law jurisdiction; and authority for redress of all wrongs committed against the Constitution or laws of the United States, or of the Territory, affecting persons or property. Each District Court, or the Judge thereof, shall appoint its Clerk, who shall also be the Register in Chancery, and shall keep his office at the place where the Court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said District Courts to the Supreme Court, under such regulations as may be prescribed by law; but in no case removed to the Supreme Court shall trial by jury be allowed in said Court. The Supreme Court, or the Justices thereof, shall appoint its own Clerk, and every Clerk shall hold his office at the pleasure of the Court for which he shall have been appointed. Writs of error and appeals from the final decisions of said Supreme Court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; and each of the said District Courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States, as is vested in the Circuit and District Courts of the United States; and the said Supreme and District Courts of the said Territory, and the respectiv Judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are grantable by the Judges of the United

States in the District of Columbia; and the first six days of every term of said Courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws; and writs of error and appeals in all such cases shall be made to the Supreme Court of said Territory the same as in other cases. The said Clerk shall receive, in all such cases, the same fees which the Clerks of the District Courts of Utah Territory now receive for similar services.

SEC. 10. *And be it further enacted*, That there shall be appointed an Attorney for said Territory, who shall continue in office for four years, unless sooner removed by the President, and who shall receive the same fees and salary as the Attorney of the United States for the present Territory of Utah. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the President, and who shall execute all processes issuing from the said Courts when exercising their jurisdiction as Circuit and District Courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the Marshal of the District Court of the United States for the present Territory of Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

SEC. 11. *And be it further enacted*, That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney, and Marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary, to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the District Judge, or some Justice of the Peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice, or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the Secretary among the Executive proceedings; and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some Judge or Justice of the Peace of the Territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of fifteen hundred dollars as Governor, and one thousand dollars as Superintendent of Indian Affairs; the Chief Justice and Associate Justices shall each receive an annual salary of eighteen hundred dollars. The Secretary shall receive a salary of eighteen hundred dollars. The said salaries shall be paid quarter-yearly at the Treasury of the United States. The members of the Legislative Assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars for every twenty miles' travel in going to and returning from the said session, estimated according to the nearest usually traveled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the Governor, to defray the contingent expenses of the Territory. There shall also be appropriated annually a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the Secretary of the Territory shall annually account to the Secretary of the Treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 12. *And be it further enacted*, That the Legislative Assembly of the Territory of Nevada shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the Governor and Legislative Assembly shall proceed to locate and establish the seat of Government for said Territory, at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said Governor and Legislative Assembly.

SEC. 13. *And be it further enacted*, That a Delegate to the House of Representatives of the United States, to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the Delegates from the several other Territories of the United States to the said House of Representatives. The first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding elections, shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly.

SEC. 14. *And be it further enacted*, That when the land in said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same is hereby, reserved for the purpose of being applied to schools in the States hereafter to be erected out of the same.

SEC. 15. *And be it further enacted*, That temporarily, and until otherwise provided by law, the Governor of said Territory may define the Judicial Districts of said Territory, and assign the Judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding Courts in the several counties or subdivisions in each of said Judicial Districts, by proclamation to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify such Judicial Districts, and assign the Judges, and alter the times and places of holding the Courts, as to them shall seem proper and convenient.

SEC. 16. *And be it further enacted*, That the Constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nevada as elsewhere within the United States.

SEC. 17. *And be it further enacted*, That the President of the United States, by and with the advice and consent of the Senate, shall be, and he is hereby, authorized to appoint a Surveyor-General for Nevada, who shall locate his office at such place as the Secretary of the Interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the Surveyor-General of New Mexico, under the direction of the Secretary of the Interior, and such instructions as he may, from time to time, deem it advisable to give him.

ENABLING ACT.

CHAP. XXXVI.—*An Act to enable the People of Nevada to form a Constitution and State Government, and for the Admission of such State into the Union on an equal footing with the original States.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of that portion of the Territory of Nevada included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves, out of said Territory, a State Government, with the name aforesaid, which said State, when formed, shall be admitted into the Union upon an equal footing with the original States, in all respects whatsoever.

SEC. 2. *And be it further enacted*, That the said State of Nevada shall consist of all the territory included within the following boundaries, to wit: Commencing at a point formed by the intersection of the thirty-eighth degree of longitude west from Washington with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the eastern boundary line of the State of California; thence in a northwesterly direction along the said eastern boundary line of the State of California to the forty-third degree of longitude west from Washington; thence north along said forty-third degree of west longitude and said eastern boundary line of the State of California to the forty-second degree of north latitude; thence due east along the said forty-second degree of north latitude to a point formed by its intersection with the aforesaid thirty-eighth degree of longitude west from Washington; thence due south down said thirty-eighth degree of west longitude to the place of beginning.

SEC. 3. *And be it further enacted*, That all persons qualified by law to vote for representatives to the general assembly of said Territory, at the date of the passage of this Act, shall be qualified to be elected, and they are authorized to vote for and choose representatives to form a Convention, under such rules and regulations as the Governor of said Territory may prescribe; and also to vote upon the acceptance or rejection of such Constitution as may be formed by said Convention, under such rules and regulations as the said Convention may prescribe; and if any of said citizens are enlisted in the army of the United States, and are still within said Territory, they shall be permitted to vote at their place of rendezvous; and [if] any are absent from said Territory, by reason of their enlistment in the army of the United States, they shall be permitted to vote at their place of service, under the rules and regulations in each case to be prescribed as aforesaid; and the aforesaid representatives to form the aforesaid Convention, shall be apportioned among the several counties in said Territory in proportion to the population, as near as may be; and said apportionment shall be made for said Territory by the Governor, United States District Attorney, and Chief Justice thereof, or any two of them; and the Governor of said Territory shall, by proclamation, on or before the first Monday of May next, order an election of the representatives as aforesaid, to be held on the first Monday in June thereafter throughout the Territory, and such election shall be conducted in the same manner as is prescribed by the laws of said Territory regulating elections therein for members of the House of Representatives, and the number of members to said Convention shall be the same as now constitute both branches of the Legislature of the aforesaid Territory.

SEC. 4. *And be it further enacted*, That the

members of the Convention, thus elected, shall meet at the Capital of said Territory on the first Monday in July next, and, after organization, shall declare, on behalf of the people of said Territory, that they adopt the Constitution of the United States. Whereupon the said Convention shall be, and it is hereby, authorized to form a Constitution and State Government for said Territory. *Provided*, That the Constitution, when formed, shall be republican, and not repugnant to the Constitution of the United States, and the principles of the Declaration of Independence. *And, provided further*, That said Convention shall provide, by an ordinance irrevocable, without the consent of the United States and the people of said State:—

First. That there shall be neither slavery nor involuntary servitude in the said State, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted.

Second. That perfect toleration of religious sentiment shall be secured, and no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship.

Third. That the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the land belonging to the residents thereof; and that no taxes shall be imposed by said State on lands or property therein belonging to, or which may hereafter be purchased by, the United States.

SEC. 5. *And be it further enacted*, That in case a Constitution and State Government shall be formed for the people of said Territory of Nevada, in compliance with the provisions of this Act, *that* said Convention forming the same shall provide by ordinance for submitting said Constitution to the people of said State for their ratification or rejection at an election to be held on the second Tuesday of October, one thousand eight hundred and sixty-four, at such places and under such regulations as may be prescribed therein, at which election the lawful voters of said new State shall vote directly for or against the proposed Constitution, and the returns of said election shall be made to the acting Governor of the Territory, who, with the United States District Attorney and Chief Justice of said Territory, or any two of them, shall canvass the same, and if a majority of legal votes shall be cast for said Constitution in said proposed State, the said acting Governor shall certify the same to the President of the United States, together with a copy of said Constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress.

SEC. 6. *And be it further enacted*, That until the next general census shall be taken, said State of Nevada shall be entitled to one Representative in the House of Representatives of the United States, which Representative, together with the Governor and State and other officers provided for in said Constitution, may be elected on the same day a vote is taken for or against the proposed Constitution and State Government.

SEC. 7. *And be it further enacted*, That sections numbers sixteen and thirty-six, in every township, and where such sections have been sold or otherwise disposed of by any Act of Congress, other lands equivalent thereto in legal subdivisions of not less than one quarter section, and as contiguous as may be, shall be, and are hereby, granted to said State for the support of common schools.

SEC. 8. *And be it further enacted*, That provided the State of Nevada shall be admitted into the Union, in accordance with the foregoing provisions of this Act, *that* twenty entire sections of the unappropriated public lands within said State, to be selected and located by direction of the Legislature thereof, on or before the first day of January, anno Domini eighteen hundred and sixty-eight, shall be, and they are hereby, granted, in legal subdivisions of not less than one hundred and sixty acres, to said State, for the purpose of erecting public buildings at the Capital of said State, for legislative and judicial purposes, in such manner as the Legislature shall prescribe.

SEC. 9. *And be it further enacted*, That twenty other entire sections of land, as aforesaid, to be selected and located as aforesaid, in legal subdivisions, as aforesaid, shall be, and they are hereby, granted to said State for the purpose of erecting a suitable building for a pen-

tiaryary or State prison in the manner aforesaid.

SEC. 10. *And be it further enacted*, That five per centum of the proceeds of the sales of all public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making and improving public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural land in the State, as the Legislature shall direct.

SEC. 11. *And be it further enacted*, That from and after the admission of the said State of Nevada into the Union, in pursuance of this Act, the laws of the United States, not locally inapplicable, shall have the same force and effect within the said State as elsewhere within the United States, and said State shall constitute one judicial district, and be called the District of Nevada.

APPROVED, March 21, 1864.

AMENDATORY ACT.

CHAP. XCIV.—*An Act to amend an Act entitled "An Act to enable the People of Nevada to form a Constitution and State Government, and for the Admission of such State into the Union on an equal footing with the original States."*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the fifth section of the Act to which this Act is an amendment as provides by ordinance for submitting the Constitution to the people of said State, for their ratification or rejection, at an election to be held on the second Tuesday of October, be so amended as to read "on the first Wednesday of September," and that the election for the purposes aforesaid be held on that day instead of the second Tuesday of October.

APPROVED, May 21, 1864.

PROCLAMATION.

TERRITORY OF NEVADA, EXECUTIVE DEPARTMENT,
CARSON CITY, May 2, 1864.

WHEREAS, By the foregoing Act entitled "An Act to enable the People of Nevada to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States," it is made obligatory upon the Governor, Chief Justice, and United States Attorney, to apportion "among the several counties in said Territory in proportion to the population, as near as may be," representatives to form the said Convention, and likewise obligatory upon the Governor, when said apportionment is made as aforesaid, to issue a proclamation ordering an election as prescribed in said Act.

Now, therefore, I, James W. Nye, Governor of the Territory of Nevada, do order and direct that an election be held in the several counties of this Territory, on the first Monday of June next, for the purpose of electing Delegates or Representatives to the Constitutional Convention for said Territory, "in the same manner as is prescribed by the laws of said Territory, regulating elections therein for members of the House of Representatives," and that the number of Representatives, to be elected in the several counties, as this day apportioned by the Governor, Chief Justice, United States Attorney, or of the Territory of Nevada, shall be as follows:

Counties.	*No. of Delegates.*
Storey	10
Lyon	4
Churchill	1
Ormsby	5
Washoe and Roop	5
Douglas	2
Esmeralda	4
Humboldt	3
Lander	3
Nye	2

In testimony whereof, I have hereunto subscribed my hand and caused the great seal of the Territory to be affixed this second day of May, 1864, at the City of Carson, Territory of Nevada.

[SEAL.]

JAMES W. NYE,
Governor of the Territory of Nevada.

Attest:

ORION CLEMENS,
Secretary of the Territory.

ABSTRACT OF VOTE BY COUNTIES FOR AND AGAINST THE CONSTITUTION OF NEVADA.

	Yes.	No.
Washoe County	1085	115
Nye County	148	53
Humboldt County	320	344
Ormsby County	999	90
Churchill County	178	100
Storey County	5448	142
Douglas County	470	76
Esmeralda County	859	72
Lyon County	896	92
Total Yes	10,375.	Total No. 1,284
Majority in favor of the Constitution		9,091

The foregoing does not embrace the vote of Lander County, as it was not certified to the Board of Canvassers in time to be considered. There was no material difference in the vote, however, and consequently it could not have changed the result.

C. N. NOTEWARE,
Secretary of State.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA:

A PROCLAMATION.

WHEREAS, the Congress of the United States passed an Act, which was approved on the 21st day of March last, entitled "An Act to enable the people of Nevada to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States:"

And whereas, the said Constitution and State Government have been formed, pursuant to the conditions prescribed by the fifth section of the Act of Congress aforesaid, and the certificate required by the said Act, and also a copy of the Constitution and ordinances, have been submitted to the President of the United States:

Now, therefore, be it known, that I, ABRAHAM LINCOLN, President of the United States, in accordance with the duty imposed upon me by the Act of Congress aforesaid, do hereby declare and proclaim that the said State of Nevada is admitted into the Union on an equal footing with the original States.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this thirty-first day of October, in the year of our Lord one [L. S.] thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

ABRAHAM LINCOLN.

By the President:
WILLIAM H. SEWARD, *Secretary of State.*

HOMOGRAPHIC CHART OF THE NEVADA STATE CONSTITUTIONAL CONVENTION, ASSEMBLED JULY 4th, 1864.

Prepared by Andrew J. Marsh, Official Reporter of the Convention.

Name.	County.	Profession	Age.	State in Life.	Place of Nativity.	Whence to Pacific Coast.	What Year.	Whence to Nevada.	What Year.	Present Politics.	Favored in 1863.	Post Office Address.
Bell, Nathaniel A. B.	Storey	Banker	37	Single	N. Hampshire	Massachus'ts	1849	California	1863	Union	Douglas	Gold Hill
Banks, James A.	Humboldt	Mining Sup't	36	Single	Pennsylvania	New York	1853	California	1863	Union	Lincoln	Dun Glen, Humboldt Co.
Bellen, W. W.	Washoe	Lumber Dealer	30	Married	Vermont	Wisconsin	1859	Wisconsin	1860	Union	Lincoln	Washoe City
Brady, H. B.	Washoe	Mechanic	28	Single	Connecticut	Connecticut	1861	California	1863	Union	Lincoln	Ophir, Washoe Co.
Brosnan, Cornelius M.	Storey	Lawyer	40	Married	Ireland	New York	1850	California	1863	Union	Douglas	Virginia City
Chapin, Samuel A.	Storey	Miner	33	Married	Massachusetts	Massachus'ts	1859	California	1860	Union	Lincoln	Virginia City
Collins, John A.	Storey	Miner	30	Married	Vermont	Ohio	1849	California	1860	Union	Lincoln	Virginia City
Crawford, Israel	Ormsby	Editor	41	Married	New York	New York	1852	California	1863	Union	Lincoln	Carson City
Crosman, J. S.	Lyon	Miner	44	Married	New York	Michigan	1852	California	1863	Union	Lincoln	Como, Lyon Co.
DeLong, Charles E.	Storey	Lawyer	32	Married	New York	New York	1859	California	1863	Union	Douglas	Virginia City
Dunne, E. F.	Humboldt	Lawyer	28	Single	New York	Ohio	1861	California	1863	Union	Douglas	Star City, Humboldt Co.
Earl, Josiah	Storey	Lumber Dealer	42	Married	Ohio	Alabama	1849	California	1864	Union	Douglas	Virginia City
Fitch, Thomas	Storey	Lawyer	39	Married	New York	Wisconsin	1860	California	1863	Union	Lincoln	Virginia City
Fritzell, Lloyd	Storey	Attorney	40	Single	Ohio	Illinois	1852	California	1859	Union	Douglas	Gold Hill, Storey Co.
Folsom, Gilman N.	Washoe	Lumberman	35	Married	Maine	Maine	1856	California	1861	Union	Lincoln	Carson City
Gibson, George L.	Ormsby	Merchant	40	Married	Maine	Massachus'ts	1849	California	1860	Union	Bell	Carson City
Haines, J. W.	Douglas	Farmer	39	Married	Lower Canada	Ohio	1849	California	1861	Union	Breckinr'ge	Genoa
Hawley, Albert T.	Douglas	Lawyer	33	Single	Kentucky	Tennessee	1849	California	1859	Union	Douglas	Virginia City
Hovey, Almon	Storey	Merchant	45	Married	New York	New York	1849	California	1851	Union	Lincoln	Silver City
Hudson, George A.	Lyon	Mill Owner	34	Single	Massachusetts	Pennsylvania	1849	California	1860	Union	Bell	Carson City
Johnson, J. Neely	Ormsby	Lawyer	36	Married	Indiana	Iowa	1849	California	1861	Union	Douglas	Dayton
Jones, William Henry	Humboldt	(did not attend.)										
Kennedy, Francis H.	Lyon	Lawyer	25	Single	Pennsylvania	Pennsylvania	1857	California	1861	Union	Douglas	Dayton
Kinkead, J. H.	Ormsby	Merchant	37	Married	Pennsylvania	Missouri	1849	California	1860	Union	Bell	Carson City
Lockwood, A. J.	Ormsby	Mechanic	30	Single	New York	Ohio	1854	California	1860	Union	Douglas	Empire City
Mason, B. S.	Esmeralda	Physician	47	Widower	New York	Illinois	1852	California	1860	Union	Douglas	Aurora
McClinton, J. G.	Esmeralda	Editor	36	Single	Illinois	Illinois	1859	California	1863	Union	Lincoln	Aurora
Morse, R. A.	Lander	(did not attend.)										
Murdock, Nelson E.	Churchill	Millwright	44	Single	New York	New York	1850	California	1860	Union	Douglas	La Platte City
Nourse, George A.	Washoe	Lawyer	30	Married	Maine	Minnesota	1860	Minnesota	1863	Union	Lincoln	Carson City
Parker, H. G.	Lyon	Mining Sup't	35	Married	Vermont	Vermont	1852	California	1864	Union	Douglas	Silver City
Proctor, Francis M.	Washoe	Farmer	30	Married	Kentucky	Kentucky	1849	California	1859	Dem'ct.	Bell	Ione, Nye Co.
Stuntevant, James H.	Nye	Lawyer	30	Married	New York	New York	1860	California	1857	Union	Douglas	Carson City
Tagliabue, Francis	Nye	Surveyor	31	Single	England	New York	1851	California	1860	Union	Lincoln	Ione, Nye Co.
Toner, Charles W.	Storey	Min'g & Mill'g	22	Single	New York	Michigan	1860	California	1860	Union	Breckinr'ge	Gold Hill
Warwick, J. H.	Lander	Lawyer	30	Married	Connecticut	New York	1854	California	1863	Union	Lincoln	Amador, Lander Co.
Wellington, D.	Esmeralda	(did not attend.)										
Weyherill, William	Esmeralda	Mining	44	Single	Pennsylvania	New Jersey	1849	California	1861	Union	Bell	Aurora
Williams, R. H.	Lander	(did not attend.)										
Johnson, J. Neely, President	Ormsby	Lawyer	36	Married	Indiana	Iowa	1849	California	1860	Union	Bell	Carson City
Gillespie, Wm. M., Secretary	Storey	Clerk	26	Single	Albany, N. Y.	New York	1861	New York	1861	Union	Lincoln	Virginia City
Whitford, And'w, Ass't Sec'y.	Storey	Clerk	22	Single	Rhode Island	New York	1854	California	1863	Union	Breckinr'ge	Virginia City
Marsh, A. J. Official Reporter.	California	Reporter	28	Married	New York	New York	1860	California	1864	Union	Lincoln	San Francisco, Cal.
Carson, T. M., Serg't-at-Arms	Ormsby	Saloon Keeper	36	Single	Massachusetts	Alabama	1849	California	1862	Union	Douglas	Carson City
Simms, Wm. E., Doorkeeper	Ormsby	Laborer	36	Married	Indiana	Ohio	1859	Kansas	1862	Union	Breckinr'ge	Carson City
Richards, George, Page	Ormsby		13	Single	California			California	1859	Union		Carson City

OFFICIAL REPORT

OF THE

DEBATES AND PROCEEDINGS

OF THE

NEVADA STATE CONSTITUTIONAL CONVENTION OF 1864.

FIRST DAY.

CARSON, N. T., July 4, 1864.

Pursuant to the provisions of an Act of Congress, approved March 21, 1864, entitled "An Act to enable the people of Nevada to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States," a Convention of Delegates representing the various Counties in the Territory, assembled in the Chamber of the House of Representatives at Carson City, for the purpose of framing a Constitution and form of State Government.

Mr. JOHNSON called the Convention to order, at ten o'clock, A. M., and said:—

Gentlemen, Members of the Convention:—At the request of several delegates, the hour having arrived when it is proposed that this Convention shall meet, I now call you to order, and move that Judge Brosnan, of Storey, be requested to serve as temporary President.

The question was taken, and the motion was agreed to.

Mr. BROSNAN took the Chair as President pro tem. of the Convention, and said:—

Gentlemen of the Convention:—I thank you most sincerely for this mark of your kind attention and respect for me. You will, I know, excuse me from making any observations at this time. Our work lies in hand, and we intend to get through with our business for to-day as rapidly as we can, in order to celebrate this glorious anniversary.

Mr. JOHNSON moved that Mr. Toner be chosen temporary Secretary; which motion was agreed to.

Mr. COLLINS. I would inquire if there is a quorum present.

Mr. JOHNSON. I believe there is not.

Mr. TOZER, the Secretary pro tem., suggested that in order to ascertain the fact, members rise and be counted.

This was done, and only nineteen members, (one less than a quorum), were present.

Messrs. JOHNSON and GIBSON suggested that one or two others were in town, and would be in in a moment.

Mr. STUKTEVANT. I suggest, that perhaps it would be a good idea for Mr. Clemens, the Secretary of the Territory, to call the roll of the members elect to the Convention. Then we shall not only know whether or not a quorum is in attendance, but any existing erroneous impressions will be corrected in regard to who are members. For instance, it does not appear from the list as published in the newspapers, that I am a member.

Mr. JOHNSON. We already have a temporary Secretary of the Convention, but nevertheless I will suggest that Secretary Clemens, as he has the roll, or list of names of members elected, oblige the Convention by calling the roll. I will make that as a motion.

The question was taken, and the motion was agreed to.

ROLL CALL.

The Hon. ORION CLEMENS, Secretary of the Territory, proceeded to call the roll of the Convention, by counties, in the order in which the election returns had been received by him:

The following gentlemen answered to their names:—

Lyon County,	Frank H. Kennedy, George A. Hudson, J. S. Crossman.
Washoe & Roop Counties,	George A. Nourse, James H. Stuttevant.
Churchill County,	Nelson E. Murdock.
Nye County,	Frank M. Proctor.
Storey County,	John A. Collins, Charles E. DeLong, Lloyd Frisall, Samuel A. Chapin, Thomas Fitch, Neith A. H. Ball, Charles Toner, Almon Hovey, Cornelius M. Brosnan.
Ormsby County,	J. Neely Johnson, J. H. Kinkead, Israel Crawford, George L. Gibson.
Humboldt County,	James A. Banks.

The following gentlemen were absent:—

Lyon County,	H. G. Parker.
Washoe & Roop Counties,	W. W. Belden, H. B. Brady, G. N. Folsom.
Esmeralda County,	William Wetherill, B. S. Mason, J. G. McClinton, D. Wellington.
Douglas County,	Albert T. Bawley, James W. Haines.
Nye County,	Frank Tagliabue.
Storey County,	Josiah Earl.
Ormsby County,	A. J. Lockwood.
Humboldt County,	R. F. Dunne, William Henry Jones.
Lander County,	J. H. Warwick, E. H. Williams, E. A. Morse.

The Territorial Secretary announced that twenty-one members were present.

The PRESIDENT *pro tem.* There is a quorum of members present, and before proceeding any further I suggest to the Convention the propriety of opening our proceedings with prayer. Inasmuch as I see that the Rev. Mr. White is present—

Mr. COLLINS moved that Rev. Mr. White be invited to offer prayer, which was agreed to.

The Rev. R. F. WHITE came forward and offered the following

PRAYER.

Our Father in Heaven, Thou art clothed in majesty and might! Thou art infinite in wisdom and truth—glorious in holiness, and everlasting in being! Heaven and earth are full of Thy presence and can not contain Thee! Thou hast given us life. Thy unwearying care has ever been extended over us, and we have dwelt and rejoiced "under the shadow of Thy wing." We acknowledge Thy mercy in directing our ways,—in appointing our changes, and in bestowing upon us all the personal, social and political blessings essential to our highest temporal and eternal well-being. We thank Thee for the civil order which has been established and maintained in this remote part of our land—that among these mountains, and amid these desert wilds, where hidden treasures are hoarded in their primal beds, neighborhoods, villages, cities, and the institutions of an enlightened Christian civilization have been planted, as in a day; and we thank Thee that now the foundations of a permanent Commonwealth are being laid,—that here, as we trust, a State is to be reared in righteousness,—an enduring monument to the honor of Thy name—a solid pillar in the great temple of human freedom, and a tower of strength to the General Government, through all time. We beseech Thee, Heavenly Father, to bless every member of this Convention. Imbue each heart with wisdom from on high, and grant that no selfish purposes, no sordid motives, no unholy ambition, may bear influence upon this floor. May every mind realize its dependence upon Thee, and be assured of the enlightening influences of Thy word, and of the blessed teachings of Thy Holy Spirit. Let harmony prevail through all the deliberations and enactments of this body, and grant that the Constitution about to be made may be deeply founded in truth and equity, and secure to all classes of the inhabitants of the new State their natural, inalienable rights. And now, oh Lord our God, we commend to Thy guardian care our bleeding country. We thank Thee for Thy goodness in rearing and thus far preserving our nation. We confess that, as a people, we have wandered far from Thee. We have neglected Thy word and Thy sanctuary. We have not heard the cry of the poor and of the oppressed. We have abused Thy mercies—have grown proud, and have trusted in our own wisdom and strength. Forgive us, oh Lord, all our sins; cleanse our nation from every iniquity, and use it as a chosen instrument for good in all coming ages. We ask that thou will abundantly bless all in authority over us, especially the President of these United States, his Cabinet, and the heads of all the departments of our Government; grant to watch over them, and to give them wisdom and strength to enable them to discharge every duty faithfully and in Thy fear. Remember in merciful kindness our armies and our navy; guide their generals and officers, and guard and sustain all under their authority. In the hour of battle be thou their shield and defence; give them victory, and crown their efforts to sustain this great nation and to restore peace with success. Bless the wounded, the sick, the destitute, the suffering, and the be-

reaved; bind up every broken heart, and supply the wants of all the needy. We pray for our enemies; show them, oh Lord, the wickedness of their rebellion; lead them to repentance, and pardon their great sin; overcome evil with good. Cause "the wrath of man to praise Thee, and the remainder of wrath restrain." Grant that the hour may hasten on when righteousness and peace shall prevail in all our borders. Bless the nations of the earth; send abroad the light of Thy word; regenerate, purify, and ennoble all the masses of our race, and fill the world with a knowledge of Thy name. Hear our prayer; mould our characters, and ever let the light of Thy love abide upon us in all its fulness and richness; and to Thy name, Father, Son, and Holy Spirit, be all the praise, world without end. Amen.

COMMITTEE ON CREDENTIALS.

Mr. COLLINS. I move that the Chair appoint a committee of three, on Credentials, to report at the next meeting.

The question was taken, and the motion was agreed to.

The PRESIDENT *pro tem.* appointed as such committee, Messrs. Collins, Johnson, and Kennedy.

ADJOURNMENT.

Mr. BALL. I move that the Convention now adjourn till to-morrow at ten o'clock, A. M., in order that we may participate in the celebration of Independence Day.

Mr. STURTEVANT. I move to amend that motion so as to adjourn to meet to-morrow, at twelve o'clock. I think most of the members will agree with me that we are likely to be somewhat sleepy to-morrow morning, after the festivities and fantasties of the day.

Mr. GIBSON. I am in favor of that amendment. It will give time for members to get here who are now absent. The Esmeralda members probably will not arrive before twelve o'clock. The stage does not get in before that hour.

Mr. BALL. I insist on my motion. I did not come down here to attend balls, and parties, and get sleepy, but to work. I came here for business.

Mr. TOZER. I hope the motion will prevail.

Mr. NOURSE. I move to amend the amendment so as to meet at one o'clock. It seems to me that the hour should be either ten or one, because twelve o'clock is the usual hour for lunch.

Mr. CHAPIN. I think the gentleman from Washoe, (Mr. Nourse,) is correct. If we do not meet at ten o'clock, we should defer it till one.

Mr. STURTEVANT accepted Mr. Nourse's amendment.

Mr. FRIZELL. I suggest, before this motion to adjourn is put, that we shall be adjourning without finishing our business properly. It seems to me that we ought to appoint a committee on permanent organization.

Mr. CHAPIN. Oh, I think not. I would not do that when there is so small a number of members present.

The PRESIDENT *pro tem.* The question is on the motion to adjourn.

Messrs. DeLONG and FITCH suggested that the question should be taken on the shortest time first; which was agreed to.

The question was taken on Mr. Ball's motion, that the Convention adjourn until ten o'clock, A. M., to-morrow; and it was agreed to, upon a division—ayes, 12; noes, 6.

Accordingly, at thirty minutes after ten o'clock, A. M., the Convention adjourned.

SECOND DAY.

CARSON, July 5, 1864.

The Convention met pursuant to adjournment, and was called to order at twenty-five minutes before eleven o'clock, by the President *pro tem.*

Prayer was offered by the Rev. E. F. White.

The roll was called, and twenty-eight members were present, viz:—

Messrs. Ball, Banks, Belden, Brady, Brosnan, Chapin, Collins, Crawford, Crosman, DeLong, Earl, Fitch, Frizell, Folsom, Gibson, Hawley, Hovey, Hudson, Johnson, Kennedy, Kinkead, Lockwood, Murdock, Nourse, Proctor, Sturtevant, Tagliabue, and Tozer.

The journal of yesterday was read and approved.

CREDENTIALS.

Mr. COLLINS submitted the following report:—

Your Committee on Credentials beg leave to report the following list of delegates, as returned by the several County Clerks to the Secretary of the Territory. There are several counties that have made no returns, or at least, none have been handed to the committee. The following is the list of delegates returned:—

Lander County,	J. H. Warwick, H. M. Williams, E. A. Morse.
Humboldt County,	James A. Banks, E. F. Dunn, William Henry Jones.
Ormsby County,	J. Neely Johnson, A. J. Lockwood, J. H. Kinkead, Ismael Crawford, George L. Gibson.
Storey County,	John A. Collins, Charles R. DeLong, Lloyd Frizell, Samuel A. Chapin, Thomas Fitch, Josiah Earl, Nath'l A. H. Ball, Charles W. Tozer, Almon Hovey, Cornelius M. Brosnan.
Nye County,	Frank Tagliabue, F. M. Proctor.
Douglas County,	Albert T. Hawley, J. W. Haines.
Churchill County,	Nelson E. Murdock.

Lyon County	Frank. H. Kennedy. George T. Sharp. J. S. Crosman. H. G. Parker.
Weahoe and Story Counties	George A. Kinsey. W. W. Booker. M. D. Brady. James H. Shortsmeed. O. M. Roberts.
Esmeralda County	William Wadsworth. F. F. Hinton. J. G. McClintock. D. Wellington.

All of which is respectfully submitted.

J. A. COLLINS, Chairman.

On motion of Mr. CHAPIN, the report was received and the committee discharged.

On motion of Mr. CRAWFORD, the report was adopted.

OATH OF OFFICE.

Mr. STURTEVANT. I move now, Mr. President, that we proceed to a permanent organization of the Convention, by the election of a President, and other officers.

Mr. CHAPIN. Before that motion is put, I suggest that the oath be administered to the members.

Mr. JOHNSON. Judge Wright, Probate Judge of this County, is I understand, in the adjoining room, and as he is, probably, the highest judicial authority now at the capital, it would be proper, I think, to invite him to administer the oath.

Mr. CHAPIN. Very well; I move that a committee of three be appointed to wait upon Judge Wright, and request him to attend and administer the oath of office to the members.

The question was taken, and the motion was agreed to.

The PRESIDENT *pro tem.* appointed as such committee, Messrs. Chapin, Hudson, and Gibson.

The committee retired, and immediately thereafter returned, accompanied by Judge Wright.

Mr. JOHNSON. I think we had better inform ourselves, if we are not already advised, as to what oath should be administered. My own memory is at fault at the present moment, in respect to the Enabling Act, but I suppose, if there is nothing in regard to the oath in that act, that we shall have to resort to that form of oath which was prescribed for all public officers by Act of Congress, passed some two years since, rather than to the one prescribed by the laws of the Territory.

Mr. COLLINS. I think the Enabling Act is silent upon the subject. I suggest that Governor Johnson possess a copy of the oath prescribed by Congress, if he has one.

Mr. JOHNSON. I think I can procure it in a moment.

Mr. STURTEVANT. I do not know but it would expedite matters to administer the old oath and the new one too; the new one is very strong, and if the old one is stronger it will not hurt us any.

After a few moments' delay, Mr. Johnson returned with a copy of the oath prescribed by Congress, in 1862.

The members of the Convention rose, and Judge Wright administered the oath in the following words:—

You and each of you do solemnly swear, that you have never voluntarily borne arms against the United States since you have been citizens thereof; that you have never voluntarily given aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that you have neither sought nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority in hostility to the United States; that you have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And you do further swear, that to the best of your knowledge and ability you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter—*So* HELP YOU GOD.

The above oath having been transcribed by the Secretary, was subscribed by the members present.

PERMANENT ORGANIZATION.

Mr. CROSMAN. I now renew the motion to proceed to the election of permanent officers.

Mr. JOHNSON. It has been suggested that another member has arrived since the oath was administered—Mr. H. G. Parker, of Lyon County—I propose that he be sworn in now.

Mr. PARKER come forward, was sworn, and took his seat as a member of the Convention.

Mr. STURTEVANT. I renew the motion to proceed to a permanent organization by the election of permanent officers.

Mr. CHAPIN. I hope the gentleman will define the motion more clearly; if he will say for the election of President and Secretary, we shall then be in working condition, and can proceed to the election of subordinate officers afterwards.

Mr. STURTEVANT. I do not know what the objection is to going on now with the election of all the officers, from the commencement; I would like to finish it up.

Mr. TOZER. I hope the gentleman from Washoe, (Mr. Sturtevant), will accept the amendment suggested by my colleague. If we elect a President and Secretary, we can then proceed to determine what other officers we shall require, what their compensation shall be, etc.; by proceeding to elect officers promiscuously, we might get more officers than we want, or not so many as we ought to have.

Mr. STURTEVANT. Then I will amend my motion so as to be, that we proceed to a permanent organization of the Convention, by the election of a President and Secretary.

Mr. CROSMAN. How are we to elect officers?—*Viva voce?*

Mr. HAWLEY. There is known to be more

than one candidate for Secretary, and as the voting may be pretty even, I think it would be equally as expeditious to vote by ballot.

Mr. CROSMAN. I suppose the first thing in order will be nominations for President, and I think there will be no objection to electing that officer by acclamation. I move that we proceed to the election of a President *viva voce*.

Mr. FINCH. If there is only one candidate for President, I have no objection; but for the other officers, I should be opposed to it.

Mr. STURTEVANT accepted Mr. Crosman's amendment.

The question was taken on the motion as modified, and it was agreed to.

ELECTION OF PRESIDENT.

The PRESIDENT *pro tem.* Nominations are in order for President.

Mr. CHAPIN. I have the honor of submitting the name of the Hon. John A. Collins, of Storey County, as a candidate for President.

Mr. KENNEDY. I have the honor to place in nomination the Hon. J. Neely Johnson, of Ormsby County.

Mr. COLLINS. Mr. President, I would return my thanks to my friend and colleague, for presenting my name to this Convention for so honorable a position; but I beg leave to decline the nomination, and will with great pleasure second the nomination of my friend J. Neely Johnson, and I move that we elect him as President of this Convention by acclamation.

The question was taken, and the motion was agreed to unanimously.

J. NEELY JOHNSON was thereupon declared elected President of the Convention.

Mr. STURTEVANT moved the appointment of a committee of three to conduct the President elect to the chair.

The question was taken, and the motion was agreed to.

Messrs. Sturtevant, Frizell, and Kinkead having been appointed as such committee, conducted the President elect to the chair.

REMARKS OF THE PRESIDENT.

Mr. JOHNSON, on taking the chair as President, said:—

GENTLEMEN OF THE CONVENTION: I do not propose to make this the occasion of any extended remarks, as I feel well assured that it is your desire to enter at once upon the more important duties which have called us together. For this evidence of your partiality and confidence in selecting me by the unanimous voice of the Convention to preside over its deliberations, you have my sincere thanks, and it shall be my constant endeavor to execute the duties of the position with strict impartiality, and with a just sense of their great responsibility and importance. But, gentlemen, whatever of rules you may adopt for our government, or however earnest and faithful may be your presiding officer in their enforcement, yet are we chiefly dependent upon the action of each individual member that our deliberations may be harmonious, and efficiency characterize the labors of the Convention, and with confidence I shall rely upon your aid and assistance, so that our proceedings may be marked with all the dignity and decorum befitting an assemblage of men convened for such a noble purpose as the present.

In conclusion, I may be permitted to add, that in view of the provisions of the "Enabling Act" authorizing the meeting of this Convention, we have a great and important duty to perform, both to the nation and to the people we represent. The Congress of the United States has made most liberal and beneficial concessions to us in providing for the formation of our new State, and the circumstances which surround us augur most favorably for the speedy establishment here of a State government. You, as the representatives of the people, come directly from their midst, and know their essential wants and requirements in framing a Constitution and form of government for them; and when you have incorporated in that instrument those needs, no longer can a possible doubt arise but that the Constitution thus framed will, at the next September election, be ordered and ratified by an overwhelming majority of the popular vote, and thereforth Nevada will be numbered among the States of the Federal Union. That this may be the result of our labors is my most earnest wish and hope. [Applause.]

ELECTION OF SECRETARY.

On motion of Mr. CHAPIN, the Convention proceeded to the election of a Secretary.

Mr. CROSMAN. I take pleasure in placing before the Convention, for the office of Secretary, the name of E. G. Clark.

Mr. STURTEVANT. I place in nomination for Secretary of the Convention, the name of Hon. William Martin Gillespie. Gentlemen are aware that he has had some experience in that capacity.

There being no further nominations the Convention proceeded to ballot for a Secretary, and with the following result:

For Mr. Gillespie.—Messrs. Ball, Brosnan, Brady, Chapin, Collins, Folsom, Gibson, Hudson, Hawley, Hovey, Kennedy, Lockwood, Nourse, Parker, Sturtevant, Toner, and Mr. President—17.

For Mr. Clark.—Messrs. Banks, Belden, Crosman, Crawford, DeLong, Earl, Fitch, Frizell, Kinkead, Murdock, Proctor, and Tagliabue—12.

WILLIAM MARTIN GILLESPIE having received a majority of votes, was declared elected Secretary of the Convention.

OTHER OFFICERS.

Mr. STURTEVANT. I now move that we proceed to elect a Sergeant-at-Arms in the same manner, and such other officers as the Convention shall see fit to elect; one at a time to be placed in nomination and voted for.

Mr. HAWLEY. I think the gentleman had better make it a little more definite—one Sergeant-at-Arms and perhaps two pages, and a porter. I think that is all we shall require.

Mr. STURTEVANT. I will make the motion to elect a Sergeant-at-Arms and let it go at that; though I think it more than likely that we shall require some one to keep the room clean, etc.

Mr. BALL. I suppose we shall take a recess very soon, for an hour; if the gentleman will allow me, I will make this motion—That a committee of three be appointed, to report one hour hence, what additional officers of the Convention are needed, and what their compensation shall be.

Mr. DeLONG. And who will pay it? [Laughter.]

Mr. BALL. We shall then elect persons who will fully understand what compensation they are to receive, and what duties they are to perform. In the last Convention there was no compensation fixed until near the close, and I think we spent nearly the whole of one day in arranging the matter of compensation.

Mr. STURTEVANT. I will withdraw my motion.

Mr. BALL. Then I make the motion I have suggested for the appointment of a committee of three, to report what officers are necessary, and to fix the compensation of all the officers, as well those already elected as those to be elected.

ADOPTION OF THE UNITED STATES CONSTITUTION.

Mr. COLLINS. I think, by referring to the Enabling Act, we shall find that we have something to do previous to acting upon the motion that is now before the house. By Section 4 of the Enabling Act, Congress imposes a certain duty upon the members of the Convention immediately after its organization. By the election of a President and a Secretary, I believe the body is now permanently organized, and therefore, with the permission of the chair, I will read that portion of the Section to which I refer:—

Section 4. And be it further enacted: That the members of the Convention thus elected shall meet at the Capitol of said Territory on the first Monday in July next, and after organization, shall declare on behalf of the people of said Territory, that they adopt the Constitution of the United States.

It occurs to me now, that before we proceed to any other business, we ought to perform this duty.

Mr. BALL. I withdraw my motion temporarily.

Mr. COLLINS. As that motion has been withdrawn, I will read a preamble and resolution which I have drawn up with a view to meet the requirements of this occasion.

WHEREAS, The act of Congress, approved March 12, 1864, "to enable the people of the Territory of Nevada to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States," requires that the members of the Convention for forming said Constitution, shall, after organization, on behalf of the people of said Territory, adopt the Constitution of the United States; therefore, be it

Resolved, That the members of this Convention, elected by the authority of the aforesaid Enabling Act of Congress, assembled in Carson, the capital of said Territory of Nevada, and immediately subsequent to its organization, do adopt, on behalf of the people of said Territory, the Constitution of the United States.

The question was taken on the adoption of the preamble and resolution as read, and they were unanimously adopted.

RULES AND ORDER OF BUSINESS.

Mr. COLLINS offered the following resolution, which was read:—

Resolved, That a committee of three be appointed by the President, to report rules for the government of this Convention.

Mr. KINKEAD. Let me suggest that the gentleman include in the same resolution, the order of business.

Mr. COLLINS. I would prefer a separate resolution, and a separate committee. I think the question of rules will occupy all the time of one committee during the recess.

Mr. CHAPIN. I hope the resolution will be made to cover the whole subject, and I would suggest also, that there be a committee of five, as the business is of considerable importance.

Mr. COLLINS. Very well; I will accept the amendment, and make it a committee of five on rules and order of business.

The Secretary read the resolution as modified:—

Resolved, That a committee of five be appointed by the President, to report standing rules, and order of business for the government of this Convention.

The question was taken, and the resolution was adopted.

The PRESIDENT appointed as the committee under the resolution, Messrs. Collins, Banks, Sturtevant, DeLong, and Kennedy.

PERMANENT ORGANIZATION—AGAIN.

Mr. BALL offered the following resolution:—

Resolved, That a committee of three be appointed by the Chair, to report the various subordinate offices to be filled by this Convention, and to fix their compensation, as well as the compensation of the officers elected.

Mr. COLLINS. I would inquire whether that last sentence does not embrace our President. [Laughter.]

The PRESIDENT. I hope the gentleman will "let me out." [Laughter.]

Mr. BALL. I think it will be very easy to fix that.

Mr. COLLINS. I move to amend the resolution by striking out the word "officers," and inserting the word "Secretary."

Mr. BALL. I will accept that amendment.

Mr. KINKEAD. I suggest a further amendment; to strike out "three," and insert "five."

Mr. BALL. I have no objection to making it five.

The resolution was read as modified:—

Resolved, That a committee of five be appointed by the Chair, to report the various subordinate offices to

be filled by this Convention, and to fix their compensation, as well as the compensation of the Secretary elect.

The question was taken, and the resolution was adopted.

The PRESIDENT appointed as the committee under the resolution, Messrs. Ball, Chapin, Tagliabue, Tozer, and Murdock.

Mr. BROSNAN. I move that the Committee on Rules and Order of Business be instructed to report this afternoon. I apprehend that they will have time to do that, and the sooner we get to work, the better. If it is necessary to have rules and order of business at all, they should be adopted at once.

Mr. CHAPIN. I hope that will be done, so that we may get to work, and that when we adjourn, it will be to meet at two o'clock, so as to give the committee time enough.

The question was taken on Mr. Brosnan's motion, and it was agreed to.

On motion of Mr. CHAPIN, the Convention took a recess until two o'clock, P. M.

—

AFTERNOON SESSION.

The Convention reassembled at two o'clock, and was called to order by the President.

SEATS OF MEMBERS.

Mr. GIBSON called attention to the matter of the seats of members, and said, so far as the members of the Ormsby delegation were concerned, they were satisfied with the seats they then occupied, which were the same as they had in the Convention of last fall. If other gentlemen, however, desired it, they would be willing to draw for seats, or to give up their seats to any gentlemen who preferred them. He thought there should be some arrangement, or understanding, and all he desired was to have the delegations from the respective counties sit together.

Mr. FITCH said the delegation from Storey was composed of very litigious materials, and he suggested they had better be scattered around among the others. [Laughter.]

Several members expressed themselves satisfied with their present seats, and no action was taken upon the subject.

Messrs. E. F. DUNNE of Humboldt, and WILLIAM WETHERILL of Esmeralda appeared, and presented their credentials; the official oath was administered to them by Judge Wright, and having subscribed the same, they took their seats as members of the Convention.

STATIONERY.

The PRESIDENT. It is well known to you all that no provision has been made, either by Congress or by the Legislature of this Territory, for the payment of the expenses of this Convention; but there are some expenses which will necessarily have to be borne in some way, such as stationery, &c. The Secretary of the Territory has been kind enough to suggest to members of the Convention that he will furnish them, from the supply he has on hand, with such stationery as is necessary. It is an act of liberality, to say the least, on his part, which I have no doubt the Convention will fully appreciate. He takes the responsibility of so doing without any authority of law, in order to aid us as far as possible in our labors; and I trust that members will see the importance of practicing all possible economy in the use of stationery, as the supply is very limited. As the Secretary of the Territory is present, he will state to the Convention what he can furnish, and his position in the matter.

Mr. ORION CLEMENS (the Territorial Secretary.) As the President has stated, there is no provision made by the Legislature or by the United States Government for stationery for the Convention, and the only fund under my control is the Legislative fund, which comes to me with specific instructions as to the items for which I am to use it, such as *per diem* and mileage of members and officers of the Legislative Assembly and other matters, which are mentioned in my instructions. I have thought, however, in view of the exigencies of the case, that I might furnish the members of the Convention with so much of the stationery which I have on hand, that they could get along without serious inconvenience. I will furnish them with paper, pens, ink, and envelops so far as they may be required. I would willingly do more, but gentlemen will see that, under the circumstances, it is out of my power.

Mr. STURTEVANT. I am not experienced in these things called conventions, but I suppose we will have a regular routine, and committees to take charge of all these matters, to be appointed by the President. There will necessarily be some expenses, and I suppose the proper committee will make a recommendation to the next Legislature to make an appropriation for their payment.

RULES AND ORDER OF BUSINESS.

Mr. COLLINS, from the Committee on Rules and Order of Business, presented the following:

The Committee appointed to report the Order of Business and Rules for the government of this Convention, beg leave to submit the following report:—

ORDER OF BUSINESS.

1—Calling the Convention to order.
2—Calling the roll.
3—Prayer.
4—Reading the journal of the preceding day.
5—Reports of Standing Committees.
6—Reports of Special Committees.
7—Motions and resolutions.
8—Second reading and reference of resolutions.
9—General file.

RULES.

Adopt as far as applicable for the government of this Convention the Rules of the House of Representatives of the third session of the Legislature of Nevada Territory, and Jefferson's Manual in matters to which the rules of said Legislature may not apply.

All of which is respectfully submitted.

JOHN A. COLLINS, *Chairman.*

Accompanying the report was a copy of the rules of the House of Representatives of the third Legislature.

The PRESIDENT. If these rules are to be adopted I suppose the word "President" is to be substituted for "Speaker" wherever it occurs.

Mr. FITCH. I do not see how we can well get along under these rules without each member being furnished with a copy, and as there are only four or five copies to be had, I suggest the propriety of having them printed.

Mr. GIBSON. Mr. Thomas Carson, who is present, states that he thinks he can find over a hundred copies, which were printed for the last Legislature, and left over.

Mr. BALL moved that the report be received and the Committee discharged, which was agreed to.

The question recurred on the adoption of the report.

Mr. COLLINS. In the rules of the third Legislature the words "Speaker" and "Clerk" occur very frequently. I move to substitute the words "President" and "Secretary" in every case.

The PRESIDENT. A motion will not be necessary to that effect; the Secretary will make the corrections, and it will be understood as being the report of the Committee.

The question was taken on the adoption of the report, and it was adopted.

ADDITIONAL OFFICERS.

Mr. BALL, from the Special Committee on Subordinate Officers and their Compensation, presented the following report:—

To the President and Members of the Constitutional Convention. Your Committee on Subordinate Officers and Compensation, have leave to report: That, in view of a short session, they deem it advisable that an Assistant Secretary be employed, and that enrolling and engrossing clerks be specially appointed when they may be needed at the close of the session. We recommend the adoption of the following resolutions:

Resolved, That the Convention elect one Sergeant-at-Arms and Doorkeeper, one Official Reporter, one Page, one Porter, one Assistant Secretary, and that the three resident clergymen of Carson be requested to alternate in opening the sessions of the Convention with prayer.

Resolved, That the following compensation be allowed the officers of the Convention:

To the Secretary, $10 per diem.
Assistant Secretary, $6 per diem.
Sergeant-at-Arms and Doorkeeper, $6 per diem.
Page, $4 per diem.
Porter, $4 per diem.
Chaplain, $3 50 per diem.
Official Reporter, $15 per diem, and thirty cents per folio for writing up his notes; *Provided*, such notes shall only be written up if the Constitution framed be adopted by the people.

Resolved, That the President and Secretary are hereby instructed to certify the proceeds of the officers of this Convention in duplicate—one to the first State Legislature convened, provided the Constitution framed be adopted; and in the event of its rejection by the people, one to the Territorial Legislature Assembled, with recommendation for their payment on behalf of this Convention.

Mr. CROSMAN moved that the report be received and the committee discharged, which was agreed to.

The question was on the adoption of the report.

Mr. FITCH. From the reading of the report it appears that we are to have three clergymen every day.

Mr. BALL. Oh, no! they are to alternate, at $3 50 each. The word "chaplain" is in the singular; not in the plural.

Mr. STURTEVANT. It strikes me quite forcibly still that each one of them will get his $3 50 per day. There might be a row among the clergymen, and that would be a thing rather discreditable to the town. [Laughter.]

The PRESIDENT. I apprehend that there is no difficulty. It is understood, of course, that the per diem is allowed to those who officiate, each in his regular course.

The question was taken on the adoption of the report, and it was adopted.

ELECTION OF SERGEANT-AT-ARMS.

Mr. HAWLEY moved that the Convention proceed to the election of subordinate officers, *viva voce*; which motion was agreed to.

The PRESIDENT announced that nominations were in order for a Sergeant-at-Arms and Doorkeeper.

Mr. MURDOCK. I put in nomination Thomas Carson, of Carson.

Mr. HAWLEY. Is it one officer, or two?

Mr. CHAPIN. It is one; but he can discharge all the duties of two.

Mr. HAWLEY. I move that we dispense with calling the roll, and elect him by acclamation.

The question was taken, and THOMAS CARSON was unanimously elected as Sergeant-at-Arms and Doorkeeper.

ELECTION OF OFFICIAL REPORTER.

The PRESIDENT announced that nominations were in order for Official Reporter.

Mr. CHAPIN. I put in nomination, Mr. President, Mr. Andrew Jackson Marsh; and as there are no other nominations, I move that the rules be suspended and he be elected by acclamation.

The question was taken, and ANDREW J. MARSH was unanimously elected Official Reporter.

ELECTION OF PAGE.

The PRESIDENT said nominations were in order for a Page.

Mr. GIBSON. I put in nomination George Richards.

Mr. BROSNAN. I would like to have the young gentleman define his position on the Union.

Master RICHARDS (the candidate for Page). Oh, it is sound! [Laughter and applause.]

Mr. BROSNAN. I move that he be elected by acclamation.

The question was taken and the motion was agreed to; and Master GEORGE RICHARDS was unanimously elected as Page of the Convention.

ELECTION OF ASSISTANT SECRETARY.

The PRESIDENT called for nominations for Assistant Secretary.

Mr. HOVEY nominated Andrew Whitford.

There being no other nomination, under a suspension of the rules ANDREW WHITFORD was unanimously elected, by acclamation, as Assistant Secretary.

ELECTION OF PORTER.

Nominations were called for for a Porter.

Mr. KINKEAD nominated WILLIAM E. SKEENE, who was unanimously elected by acclamation.

Mr. CHAPIN. As the officers are now all elected, I suggest that Judge Wright be invited to come in and administer the oath of office to them.

The PRESIDENT said he would take that course.

Judge S. C. Wright came in immediately thereafter, and the oath of office was taken and subscribed by the several officers of the Convention elected.

Mr. KINKEAD. I presume it is necessary to take some action in regard to notifying the clergymen of the request of the Convention that they officiate alternately as Chaplains. I move that the Secretary be instructed to notify the three resident clergymen of Carson City of the action of the Convention in reference to the Chaplains.

The question was taken and the motion was agreed to.

BASIS OF THE CONSTITUTION.

Mr. CHAPIN. I suppose we are now ready to go to work, as the machinery of the Convention is all in regular order. I therefore offer this resolution:—

Resolved, That the Constitution adopted by the late Convention be taken as a basis by this Convention, and that the same be taken up in Committee of the Whole and acted upon section by section.

ADJOURNMENT WITHOUT DAY.

Mr. DUNNE. If the gentleman will permit me, I have a resolution which I wish to offer, and which I think comes more properly before the one he has presented. It will take but a moment to act upon it, and I will ask as a favor that he withdraw his resolution for the present and allow me to present mine.

Mr. CHAPIN. Certainly; I withdraw it.

Mr. DUNNE. Before the resolution which I offer is read, as it is the first time I have had the floor since the marked courtesy extended by the Convention to those who came late, by waiting for them before proceeding to business, I desire to express my appreciation of that courtesy, and the more so because, perhaps, something in these resolutions might be construed as not evincing that appreciation on my part. The sentiments of these resolutions are such that I am satisfied—

The PRESIDENT, (interrupting.) Will the gentleman suspend a moment; I think the resolutions are not seconded.

Mr. BANKS. I will second them in order to get them before the house, though I do not know what they are.

The PRESIDENT. Perhaps they had better be read before the gentleman proceeds.

Mr. DUNNE. Only one word. I present these resolutions on the sentiments of a large body of my constituents, and as the sentiments of those people, I ask to have them receive the attention of the Convention. With this explanation, I will ask the Secretary to read them.

The Secretary read as follows:—

WHEREAS, This Convention has assembled, and now duly sits, of the people of this Territory, but in pursuance of an Act of Congress which positively compels us to take action upon a question which, in my opinion, should be left entirely to the unbiased judgment of the people, uninfluenced by the immediate presence of candidates for office, or by the sanguine opinions of partisan zealots; and

WHEREAS, The overwhelming decision rendered by the late Constitution, from the people themselves, but a few months ago, and later still from their representatives in Legislative assemblage, is a convincing proof of the sentiments of this Territory as to the propriety of at present assuming the responsibilities of a State Government; and that the vote cannot then believe in favor of such action was no test, therefore, as no question on the subject was had, and the question remained no part of the real issue in the contest; and

WHEREAS, The sanctioning of a State Government upon even the most economical basis is necessarily attended with a burden of expenses, greater than the people at present can bear, and which would necessitate a ruinous system of credit and depreciation of the paper of the State, because of the absence of the only legal basis of revenue upon which the people will willingly consent to be taxed; and

WHEREAS, The removing of the supporters of the late Constitution, that having manifestly been void there the taxable property of the Territory, decided in amount and evident in value, has failed to be assessed by the Assembly in the same; but that, on the contrary, a depreciation instead of an increase has ensued; and

WHEREAS, The submission of another Constitution to the people, at present, would be to throw upon them again an election on a great question for the settlement of a question upon which they have just given their decision—so recently, in fact, that the odds of their pronunciation has scarcely yet died in our ears; and

WHEREAS, Of all possible times for the consideration of such a question, the present is the most inopportune, the question being one which should be divorced from its intimate mention alone, even when calm for the exercise of the broadest judgment, and the consideration of its effects upon the whole people, but not as to how it may benefit the unanswered few, and this time proposed for action upon it being not only at the red-hot heat of a Presidential campaign, but of a contest the like of which, for personal animosities and party bitterness, the world has not yet witnessed; when the mingled indignation and burning zeal forged, with relentless hate of patriotic zeal against the infamy of treason may easily be stirred by designing politicians to carry this Constitution through, if for no other reason than because it would include an additional penny upon the rebellion; to see another star rise proudly to its place in the constellation sought to be shrouded in the pall of death; and

WHEREAS, Though we yield to no portion of this nation in our love or devotion to our country, do to willingness to sacrifice our interests for the public good, we do not believe the Government is threatened by any danger which therefore of us the imposition of the attitude of a State to prevent; and

WHEREAS, We have assembled here as the representatives of the real interests of this Territory, in order that no undue prejudice to those interests should be had in this body; and

WHEREAS, There is nothing in the act calling us together which imposes any obligation upon us to form a Constitution; and

Resolved, That we believe the interests and welfare of the people require the formation of a State Government; and that we will not submit to the action of Congress in the matter of admitting us into the Union, until we have the privilege of voting upon the Constitution which may be framed by the Convention of the people assembled for that purpose, and of deciding whether we will, or will not, submit to the conditions of admission which may be imposed by Congress.

Resolved, That we believe the present population of the Territory, taken in connection with the considerations of our circumstances—a careful comparison of our present state with what it was twelve months ago, financially speaking, or what it was at the time when the previous Constitution was proposed and rejected—we should be induced to refrain from presenting another Constitution to the people at the present time. I think that the depreciation of property, the depreciation of the value of mining stocks, and the cessation of investments necessarily consequent upon the downfall of all mining stocks, have rendered such a measure impolitic. I say that all these things taken together, tend to show that if the people did not wish to adopt a Constitution and State Government, some months ago, when everything looked more prosperous and promising than now, they certainly do not wish to do so at this time.

That, in regard to the basis of revenue, I think it is unmistakably apparent to all that the last Constitution was rejected because the mines were taxed; there can be no question as to that proposition. Now, if there is to be a Constitution submitted to the people, leaving that clause out, or recommending the proposition that the mines shall not be taxed, I think it would undoubtedly be satisfactory to the people in that regard; but I doubt whether such a Constitution would be satisfactory to the office-holders under that Constitution, for I do not see, for my part, where their pay would come from. There is scarcely any property, when you come to look at the vast budget of State debt which would be accruing every year, aside from the mining property, from which you can hope to raise funds to carry on a State Government. There is scarcely any property to speak of in this Territory, outside of mining property, and the people will not willingly consent to see that species of property taxed. In my own county, to my knowledge, since the measure, under the revenue act of last winter, began its operations, the people have expressed the most unlimited abhorrence of that mining law—the law taxing mining property—and they have expressed their determination that that law shall be repealed at the next session of the Legislature. They expressed, further than that, their determination never to consent to have such a law remain on the statute books.

Those who believe that a Constitution can be adopted now with the mining tax clause in it, think we can go on under it and get a revenue, because they have succeeded in having a law passed by the Legislature taxing this species of property; and so long as that law remains, they say, then everything is sure and as they want it. Because the Legislature adopted that measure once, they contend that we can adopt it again, and safely allow it to go before the people without any clause exempting the mines from taxation. I hope, however, that their expectations will be disappointed in that respect.

But I know that the minds of most of the members have been specially exercised on this subject, as it has been before the people in many ways since the late Constitution was rejected, and I am satisfied, therefore, that the Convention will be willing to determine this matter without further debate. Hence, as I do not wish, above all things, to set the example of making long speeches, I will submit my resolution to the action of the Convention, without any further remarks, unless they shall meet with some opposition which may call for reply.

Mr. BROSNAN. I move that the preamble and resolutions be indefinitely postponed.

Mr. DeLONG. I have asked that the resolutions be read. I am informed, however, that they are very long, and I will withdraw that request if some gentleman will state the purport of them.

The PRESIDENT. The purport, so far as the Chair understands it, is a proposition that we dissolve this Convention and go home to our constituencies without doing anything further.

Mr. BROSNAN. I wish to make one or two suggestions before the vote is taken on the pending question. I have listened to the reading of the preamble and resolutions with a great deal of attention, and I have been struck very much, Mr. President, with the loyalty of the sentiments which they embrace. I should be the last person in the world to vote against those sentiments, or to willingly favor any opposite doctrines. But that, I conceive, is not the question here. I consider that our duty is marked out for us by the highest authority of the land, and that, as sensible men, who have been sent here to discharge a specific duty, we should

be playing the part of children to dissolve our Convention at the present time without having done what we came here to perform. So far as the loyalty of the sentiments expressed in the resolutions is concerned, I most heartily accord with them each and every one, and lest it might be deemed by my friend from Humboldt that I intended any disrespect either to him or to the loyal sentiments which he has embodied in his resolutions in moving their indefinite postponement, I will ask permission to change my motion, and move instead that they be laid upon the table.

Mr. DUNNE. I said that I would make no further remarks unless some point should be made against the resolutions, and I notice now that there is a point made, namely, that it is our duty here to form a Constitution; that that path of duty has been marked out for us by the supreme authority of the nation; that we have come here in obedience to that call, and would be recreant to our duty if we adjourned our Convention without performing that work which we came here to do.

Mr. FITCH, (interrupting.) I rise to a question of order. I dislike to interrupt the gentleman from Humboldt; but certainly, upon a motion to lay upon the table, debate is not in order.

Mr. DeLONG. I do not think my colleague from Storey (Mr. Brosnan) intended by his motion to cut off debate, and I would request him to withdraw the motion. It is rather a harsh way for a gentleman to make a speech and wind up with a motion to lay upon the table, which necessarily prevents any one from replying.

The PRESIDENT. The motion is not debatable, and unless it is withdrawn the Chair will rule debate out of order.

Mr. DUNNE. I should think that, having made a portion of an argument against the resolutions, the gentleman from Storey would be willing to have them further discussed.

Mr. HAWLEY. I would suggest that, judging from the drift of the remarks of the gentleman from Humboldt (Mr. Dunne), so far as he has been allowed to proceed—I am inclined to think at least that a point was about to be raised which it would probably be well enough for the Convention to take into consideration. If it is in order, I will ask that the rules be suspended to allow the gentleman to make his explanation.

Mr. FITCH. The only way to settle it, I take it, is to vote down the motion to lay on the table, or for the mover of that motion to withdraw it; there is nothing else in order while that motion is pending.

Several gentlemen objected to the withdrawal of the motion to lay on the table.

Mr. CROSMAN. I hope the Convention will consent to its withdrawal temporarily.

Mr. NOURSE. I hope it will not be withdrawn; these resolutions have been thrown in here as a sort of firebrand, and I hope the motion now pending will not be withdrawn, but that we shall dispose of the whole subject in a summary manner and proceed with our business. I object to its withdrawal.

Mr. PARKER. I ask for information in regard to the rules. If this matter be laid on the table I want to know whether, under the rules, either a majority or two-thirds can take it up again. That may make a vast difference, because if it is liable to be taken up again, we may be annoyed with this question for months here.

The PRESIDENT. The Chair has no more opportunity of ascertaining what the rules are than the rest of the Convention, as they are not accessible in print, and there is only a single copy on the table; but the impression of the Chair, from his past experience, is, that laying a subject upon the table is about the last of it.

Mr. COLLINS. I think there is another rule equally applicable, which is, that a majority can take it up again at any time.

Mr. DeLONG. Certainly, the best way is to withdraw the motion, and move an indefinite postponement. Then if the gentleman do not want debate, they can move the previous question, and have a vote on that. If the previous question be sustained, and the motion to indefinitely postpone carried, we get rid of the question forever. For one, I would like to have it discussed as long as the gentleman wants it discussed. I do not understand that it makes any difference whether it requires a majority or a two-thirds vote to take it up again, because in either case it may be taken up at any time.

Mr. FITCH. I understand the rule to be in California, that a majority vote may take any subject from the table.

Mr. BANKS. The practice in California has been to require a two-thirds vote when the motion to take up was not made in the regular order of business, but under the head of "motions and resolutions," or under the head of "unfinished business," any matter could be taken up by a majority.

The PRESIDENT. This discussion is somewhat out of order, but it has been tolerated by the Chair in order that the Convention may understand the effect of the vote to be taken.

Mr. TOZER. It seems to me desirable to dispose of this resolution finally at this time; but I dislike very much to dispose of it without a full, fair, and free discussion upon it. It is a matter, certainly, of considerable importance, as the gentleman from Humboldt says it embodies the views and wishes of a large portion of his constituency; and I really hope that nothing will be done in the Convention which will cut off the discussion of the matter. Let it be amply discussed, and then finally disposed of.

The PRESIDENT. This discussion is all out of order. An inquiry was made in reference to the effect of the vote about to be taken, and the Chair is now prepared to state, from the

Delano unanimously given him, in standing the votes; and in my opinion of the Chair, I believe my vote would be sufficient to take the resolutions from the table, inasmuch as only a majority vote is necessary to lay them upon the table.

The Chair has construed it to require a two-thirds vote to lay the resolutions on the table.

General gentlemen understand the vote and what I vote the table by; you and aye.

During the voting—

Mr. DeLONG. I ask leave to explain my vote, and merely wish to say a word. I intend to vote in the negative on this question, simply out of courtesy to the gentleman who offered the resolutions, and not because I think there is an necessity for a State Government, nor because I do not intend to support the Constitution when which may be framed here. I vote "no," mainly out of courtesy, and I regret that the question ever arose, because I would like to give to the Convention, and through it to the people, my reasons for favoring a State Government at this time, which if it is will known, that can vote aye. I intend it will all my might. I vote "no."

Mr. GIBSON. I shall vote "no" for the simple reason that I wish to have the subject considered.

Mr. HAWLEY. I ask leave to say a word in explanation. I shall vote "no" upon the question of laying on the table, partly because I wish to see an opportunity extended to the gentleman from Humboldt, (Mr. Dennis,) to explain the peculiar views on the question which he introduced, or intimated in his remarks, as far as he went. If "shadowy events cast their shadows before," I am inclined to think that the gentleman from Humboldt was about to raise certain propositions based upon the remarks of the gentleman from Storey, (Mr. Brosnan,) to the effect that he did not consider this Convention in duty bound to take into consideration, or to take any action whatever, of the call of the national government convening us here for a specific purpose. How much further he might have gone if he had not been interrupted, we have no means of knowing; and for my part, as a member of the Convention, and a delegate representing a loyal community, I feel somewhat desirous to understand the gentleman's entire position.

Mr. TUCKER. I ask leave to explain my vote briefly. I vote "no" on the motion to lay the resolutions on the table, and I do so for the same reasons which have been given by other gentlemen of this Convention,—not because I am not of this mind favor the organization of a State government, but simply because I am opposed to the manner of disposing of the resolutions.

The result of the vote was announced as follows:—

Yeas—Messrs. Bates, Bicknell, Brosnan, Brooks, Collins, Corbett, Crockett, Dale, Dennis, Dunne, Fitch, Gibson, Hawley, Kennedy, Lockwood, Mc Kinney, Pickett, Swinnerton, Tuckfield, and Wetherell—21.

Nays—Messrs. Crockett, Delano, Delong, Gomez, Harper, Hayden, Hollingsworth, Keller, Tuck, and the President—10.

Mr. CROGHAN. I voted "no" for the reason which have already been assigned by gentlemen. It was my expectation, or at least my hope, that this motion to lay upon the table would have been voted down, in order that I might make a motion to immediately postpone the resolutions. Upon that motion, my friend from Humboldt could have explained his position.

The PRESIDENT. The gentleman is not in order, except by consent of the Convention. [Cries of "Leave, leave."]

Mr. CROGHAN. Only one word further. I wanted the gentleman to have the privilege of explaining; and believing that the votes of the Convention was in favor of disposing of the resolutions immediately, the vote could then be taken on indefinite postponement. For my part, I am in favor of a State organization, and I am in favor of doing anything that the General Government asks at our hands, to sustain it in this conflict.

The PRESIDENT. In this same connection, with the permission of the Convention, while explanations are the order, I desire to say that I am opposed to every thing contained in these resolutions, except the very loyal sentiments expressed therein, which I of course heartily approve. For the same reasons which have been expressed by other gentlemen, I voted against laying the resolutions on the table.

Mr. BANKS. I will leave to say a few words by explanation of my vote. I will only say, that with all my desire to extend courtesy to my colleague, for whom I entertain the most profound respect, I so thoroughly disagree with the sentiments advanced in these resolutions, so far as they pertain to the people whom I represent, and so far as they pertain to the propriety of adopting a State government, that I felt compelled to vote in favor of laying them on the table, because I regarded that vote as a test vote, and I wished to place myself right on the record against those resolutions.

Mr. HAWLEY. Will the Convention allow me a moment to explain my vote? I merely wish to say that I am decidedly in favor of a State organization, and opposed to everything in the resolutions except their patriotic sentiments. I wanted to say this now, because I neglected to do so when I had the floor before.

Mr. DUNNE. Some gentlemen in explaining their votes, have expressed a desire to extend courtesy to the gentleman from Humboldt. Now, I would say that with me there is not a particle of personal consideration in this matter—the gentleman from Humboldt knows the slightest feeling about it. He understands that the vote was simply on the principle involved in the resolutions which he had duty to his duty to refer, conceiving it to be the wish of his constituents that resolutions of this nature should be presented for the consideration and action of the Convention. So far as the gentleman

from Humboldt is concerned, therefore, there need be no hesitancy on the score of courtesy.

Mr. NOURSE. If there are any others who desire to explain their votes, I suggest that they be allowed to do so in the columns of the Census *Independent*.

Mr. KINKEAD. After the explanation which has now been made by the gentleman from Humboldt, I desire to change my vote to the affirmative.

Mr. GIBSON. I desire to do the same.

Mr. CROSMAN. I wish to change mine also.

Mr. TOZER. I wish to explain before changing my vote. I voted "no" only as a matter of courtesy to the gentleman, and now I vote in the affirmative.

The PRESIDENT. I will state, with the permission of the Convention, that I am not prepared to refer to the gentleman's explanation as a reason why I should change my vote. I voted in the negative, because I wanted to have the matter discussed. I wanted to hear from some gentlemen whom I knew had hitherto opposed the adoption of a State Government, and who are now the ardent friends of that policy. I desired to hear from them an explanation of the reasons which, in their judgment, now exist in favor of a State Government which did not formerly appear, and I wanted that explanation to go forth to the people, to show them the reasons why we desire now to adopt a State Government. I wanted the subject ventilated, and believed there was no better time for this discussion than at the preliminary stage of our proceedings, in order that the people may be instructed, so far as the views of their delegates are concerned, as to the reasons and arguments in favor of the formation of a State Government. I do not change my vote, therefore, and I hope the matter will still be discussed, and possibly I may participate in such discussion. I will repeat, however, my former statement, that I am opposed to everything in the resolutions, save and except their loyal and patriotic sentiments.

Messrs. Parker and Hawley changed their votes from the negative to the affirmative.

The result of the vote was again announced, as follows:—

Yeas—Messrs. Ball, Banks, Bobbs, Bowman, Brady, Chapin, Crosman, Crawford, Collins, Earl, Fitch, Fitzhugh, Folsom, Gibson, Hudson, Hawley, Harrey, Kinkead, Kennedy, Murdock, Nourse, Parker, Proctor, Simmons, Stephens, Tozer, and Wedertill—27.

Nays—Messrs. De Long, Dunne, Lockwood, and Mr. President—4.

So the preamble and resolutions were laid on the table.

Mr. CHAPIN. I desire to say that I voted aye for an entirely different reason from any that has yet been stated. I voted to lay the resolutions on the table for the simple reason that I believe we are here for business, not for the presentation of arguments for or against the adoption of a State Constitution. I came here to work, and I want to go to work, and work every hour till I get through, and go home to attend to my private business; and then let every man who wants to present arguments for or against the Constitution which we shall have adopted, go home, and work and talk as long as he pleases. Those are my sentiments, and those are the reasons why I voted the resolutions laid on the table and allowed to remain there.

Mr. FITCH. I would like to explain my vote. I have only this to say—that I raised the question of order upon the motion to lay on the table, not out of any discourtesy, but solely because I believed it to be important that we should enforce the common parliamentary rules in the outset.

Mr. DeLONG. Now, I am compelled to rise to a point of order, because these gentlemen who put the gag on me are likewise making long speeches. My point of order is, that there is no question before the house.

The PRESIDENT. The gentleman from Storey (Mr. Fitch) asked leave to explain, and leave was given him, by the assent of the Convention, to proceed.

Mr. FITCH. I only want to say that I raised the question of order, not out of discourtesy to any one, nor from any desire to stifle discussion, but simply because I saw that the discussion was flagrantly and clearly out of order.

Mr. EARL offered the following resolution, which was read by the Secretary:—

Resolved, That we now enter into a Committee of the whole, and ask of Congress to give us a change in our testimony, and that this body now appoint such change, necessary to be made, and forward the same to Congress. That we then adjourn, hoping that Congress will grant our request; that we say to the people of the Territory that if this change is granted us, we think it better for the present to remain as we are, under a Territorial Government.

Mr. EARL. I offer this resolution, thinking it will do no great hurt at least, to ascertain what the feeling is amongst delegates from different parts of the Territory in relation to our passing now from a Territorial to a State form of government: I offer it for that purpose wholly.

Mr. DeLONG. Mr. President, I am frank to confess that if the recommendation in that resolution could be carried into effect immediately, and we could be assured that the desired change in our judicial system would be effected in that mode, I would certainly favor it, and it would be all I should ask. I went into the canvass and opposed the adoption of the Constitution last year, and the main grounds of my argument were, that in my opinion, we, as a people, were too young; that the amount of public property in this Territory which would be taxable under that Constitution was too small to warrant this people in assuming the responsibilities and obligations of a State Government, the support of which must fall so ruinously upon the small amount of property which was then within our confines. I proposed that we should wait until we had the

amended would be which to base a State Government, so far as property was concerned, so that our revenues might be sufficient to meet our expenses. But, sir, since that time, in the short space of less than a year, I have seen so many of the evil workings of a Territorial Government like ours, situated so far distant from the central Government, to which most are looking for appointments; I have seen, in our judicial department, such an extraordinary lack of ability to come up to the requirements of our condition, in the men who have received appointments in that department, that I have come to the conclusion that some remedy is absolutely demanded. Nor is it alone a lack of ability on the part of our judges. Of our three judges at one time, at this time, one is sick and the others have disqualified themselves, and thus blocked the wheels of justice; so that in reality we have no Courts at all; although I know, and every lawyer knows, that we have interests in litigation so vast in importance that the parties interested in them could almost afford to pay the expenses of a State Government for one year if by that means they could have their rights judicially determined. This is what impels me to favor a State organization. It is to obtain the power of electing our own judges, and just as many of them as we want, to transact our criminal and civil business. But I feel sure that if this resolution should pass, or one embodying the same propositions, and we should petition Congress for this change of judiciary, the petition would hang there and probably never be acted upon; or even if it were acted upon we should not be sure of obtaining any relief whatever; consequently, I have made up my mind to vote for and support a State Government, and I shall vote against this resolution.

Mr. NOURSE. It seems to me that this is not the place to discuss the question whether or not we should adopt a State Government, and therefore I am opposed to the resolution. We are here to make and submit to the people a Constitution and form of State Government, and then let them say whether or not they will have a State Government. I move that the resolution be indefinitely postponed.

The question was taken on the motion to postpone the resolution indefinitely, and it was agreed to.

BASIS OF THE CONSTITUTION.

Mr. CHAPIN. I now call up my resolution, and ask that the Secretary read it as modified.

The Secretary read as follows:—

Resolved, That the Constitution adopted by the late Convention be taken as the basis of the Constitution to be adopted by this Convention, and that the same be taken up in Committee of the Whole, and acted upon section by section.

Mr. NOURSE. I would inquire in relation to that, Mr. President, whether that will prevent the examination of different portions of the Constitution by committees? If so, I am not prepared to say whether it would be well or ill. I would like to have that understood.

The PRESIDENT. I suppose it would be entirely competent for the Convention at any stage to raise a committee to consider any portion of it.

Mr. CHAPIN. I will explain my view of it, Mr. President. I notice that the committee which was appointed before we took a recess did not report a recommendation that we should have any standing committees; consequently, as we must bring up our business in some manner, I think that this would be the best method. We can take up the Constitution, adopting it as a basis, and consider it in Committee of the Whole. Let us go on with it there, until we come to a disagreement, or until discussion arises, and then, if it should seem to be necessary, we can appoint a special committee of five or any other number, to which may be referred any particular section or article in regard to which there may be differences of opinion. I think it would be the better way to take up the Constitution in the manner the resolution proposes, and then as we see the necessity of appointing committees upon any particular portions, let them be appointed to report at subsequent meetings. I believe we can expedite business in that way much more rapidly than we can by referring the whole matter to various standing committees.

Mr. DeLONG. I wish to offer an amendment to that resolution. I move to strike out the words—"The Constitution adopted by the late Convention," and insert the words—"The amended Constitution of California;" so as to read: "*Resolved*, That the amended Constitution of California be taken as a basis," etc.

Mr. BANKS. I second that motion.

Mr. DeLONG. I trust, Mr. President, that the Convention will bear with me in the few remarks which I desire to make on this subject, because, whether successful or unsuccessful in the enforcement of the views which I present, it will probably be the last occasion on which I shall make any lengthy remarks in the Convention. I hope, therefore, that I may be heard patiently. Now, sir, I came here with this as a particular pet object which I had in view—that this Convention should adopt the amended Constitution of California as the basis of the one which they were to frame for submission to the people of Nevada. My reasons for wishing that are these: I know that this Territory is peopled almost exclusively by Californians—by men that have lived and acquired property there for years past—who have lived under and are acquainted with the Constitution of that State as it has been construed from time to time by the Supreme Court of that State. They have come into this Territory and found that here the leading and paramount interests of our Territory are similar to those which they left behind them in the State of California. This important fact renders the Constitution and laws of California peculiarly applicable to us; for if

they were applicable to the wishes and wants of Californians at home, they are equally applicable here, so long as our leading and paramount interests are the same. These men have acquired interests here under a knowledge of the laws as they are established there. They have regulated their intercourse with each other here as it is regulated there, to a greater or less extent. In fact, they have brought with them the peculiar customs and usages which prevail there, under the Constitution and laws of that State, and they have been governed by them in the acquirement of property here. Now no other State in the Union, and no other land on the globe, except perhaps some of our remote Territories, have those peculiar interests which we have in common with California, and consequently the Constitution and laws of any other State would be decidedly more inapplicable to us than would the Constitution and laws of California. The people of that State have gone on under their Constitution for fifteen years, and have been pleased with it. It has worked well, and as a truly loyal, energetic, enterprising, and intelligent people, they are fully satisfied with it. Then why should we desire or expect to obtain anything better than that?

Then, another thing, if you adopt any other Constitution, I care not whether it be better or worse than the one I propose by my amendment, and if in any single clause of that Constitution there is a difference in the reading, if any case arises which involves a construction of that clause of the Constitution, parties litigant will not rest content with a trial in the court of first instance, but in all cases, advised by their attorneys, they will appeal, and there will be the necessity of a construction of that clause. The opposing counsel on either side will always desire to have the Supreme Court of the State construe the clause for them. That is what led to that multifarious system of litigation in California. Perhaps the Supreme Court of California has had more business before it during the last twelve or fifteen years than the first appellate court of any other State in the Union, within the same period of time. And why? Because simply the people never will rest content with the decisions of the lower courts, but always appeal to the Supreme Court upon every possible Constitutional question, until they get the entire instrument construed by the court of last resort. Now, if we adopt the Constitution of California we have the benefit, without cost to us, of fifteen years of jurisprudence there, and all the litigation of their courts and the constructions which the Supreme Court have given to that instrument. The Supreme Court of that State has been presided over by men of marked ability. Such men as Stephen J. Field, and other eminent jurists whom I might name, have adorned that bench with their learning and legal talent, and their decisions would be received here by our courts, and by parties litigant, with scarcely ever a question, and without the expense and trouble of going to our Supreme Court to ascertain the true construction. If we find that Judge Field and other eminent judges have thrown the light of their genius upon any clause of the Constitution, we shall be willing at once to accept that construction.

Another thing: the California Reports are to nearly every lawyer's library here, and they are familiar to every business man; and they would become standard authorities on questions of law, because they are reports of decisions upon the same instrument which we would have as our fundamental law. I think it would save a world of expense, and a vast amount of litigation. And I think also—and in my opinion this is worthy of consideration—that when the question is presented before the people whether or not we are to have a State Government, this action would prevent many men from doubting the wisdom of the instrument submitted for their approval or rejection. It would prevent men from going into the canvass and telling the people, who do not always stop to consider or to study, that the Constitution proposed contained some new-fangled machine that would blow them all up. [Laughter.] The reply to that would be that we had adopted the same instrument that California has, and under which that State has lived and prospered for fifteen years, and if California has got a good Constitution, then we have a good one also.

Now, I know, Mr. President, how much men become attached to their own works—to the things of their own creation. I know that a large and respectable number of gentlemen in this Convention were members of the last Constitutional Convention—gentlemen who framed this Constitution which I now hold in my hand; and it is natural for them to believe that in the framing of it they had framed a wise fundamental law. But they will agree with me when I state that on that point they and the people disagreed. That Constitution was repudiated. They may say it was not on account of any inherent defects in the instrument itself; but I say this, that there were defects, and glaring defects, which met with disapproval at the hands of this community, and which, if they were reiterated to-morrow, would secure to the work of our hands the same popular condemnation. It would be a fatal error, which would blast all our hopes that the people will adopt what we here shall construct.

I say, also, that there were many objectionable things contained in this instrument which were not brought to the attention of the people during the canvass, as they would have been, if there had not been more salient points to be assailed—things which were never mentioned by those who opposed this Constitution and State Government before the people. I know that, for I was one of the number that opposed it, and I was in most of their conferences. I know that the Constitution was assailable in

many other points than those which we see fit to submit to the people.

Now in following the line of the California Constitution, we are only following in that of the Constitution of a still greater State; a Constitution which received the indorsement of many wise men. I speak of the Constitution of the State of New York; a State which has given her Constitution to very many of the Western States of this Union. The Constitution of California was derived from that of New York, and from California it comes to us, and then we have a Constitution which all may understand and upon which there need be no disagreement.

I have no feeling of personal pride, or desire to uphold that which they have themselves created, will prevent any gentleman on this floor from selecting, as the basis of our new Constitution, that which is the best. We desire to give this people a fundamental law which will be wise, and which all may understand, and one also which they will adopt when called upon to vote upon it. We desire to remove as many as possible of the grounds of opposition, and of the arguments against a State government by those who are opposed to it, and who would naturally in the onerous attack the instrument itself as being unwise.

Now, sir, with these views, as briefly and hastily, I leave this proposition with the Convention. Is it not better to take that Constitution, that we know to be a good one, because it fully protects the people in their lives, in their liberty, in their property, and in the pursuit of happiness; a Constitution that is better understood than any other one could be in this State, and one that is more applicable than any other, because our interests are more nearly identified with those of California than with those of any other State in the Union? Why should we not, for these reasons, take up that instrument which has received this thorough trial, and which has been found to be good and beneficent? Why not take that up and make it the basis of our action? And if in any particulars we see grounds of objection, we can offer amendments, and improve upon that which has been adopted and acted upon so long by the people of California. Let us improve upon it if we can, but let us assume it as the basis of our own fundamental law, and then we will have a fundamental law which originates not with us, but with a few men assembled here who may be, and probably are, less wise in their generation than many of the men who have thrown the light of their minds upon the Constitutions of California and of New York; but we will have the benefit of the wisdom of the past, the benefit of the jurisprudence of the past, the benefit of past experience; and I confidently believe that we shall then present to the people an instrument which they will be more ready to adopt than any new or untried experiment which could possibly be brought forth by us.

Mr. CHAPIN. I have a few remarks to make. I hope the amendment offered by my colleague, (Mr. DeLong) will not prevail. The resolution which I offered admits of every flexibility for amending every section, and every line throughout the whole document. And now I would like to inform my colleague that, as the President very well knows, this Constitution which I offered as the basis for us to get upon now, was framed under a resolution offered by Judge Bryan in the late Convention, at by Judge Bryan in the late Convention, at that the Constitution of California should be the basis of the Constitution there to be framed. Under that resolution we went to work, and this Constitution was framed and adopted by that Convention. Now I believe it will facilitate the business very much, to take up this document which was framed by the last Convention, and let us proceed under that as a basis; so that we will not have to begin, and go the whole work over again, which was done by the last Convention. This document is already a remodelling of the Constitution of California, so as to adapt it to our own peculiar circumstances, and our own local divisions and subdivisions, geographically, with reference to our courts, and every thing else; and it would require at least four times as much labor to go back and adopt the Constitution of California in all these things, over again, as it would to proceed under this Constitution. I hope this amendment will not prevail.

Mr. DUNNE. I conceive that the manner in which this resolution itself operates, is a sufficient illustration of the fact that we shall never get through with the Constitution, if we attempt to discuss every one of its provisions in Committee of the Whole. Long-winded speeches move slowly. In half an hour we have not determined on this single question, and I think in two months we shall not have finished the entire Constitution, if we attempt to do the whole work in Committee of the Whole. I think well of the proposition to accept the last Constitution as the basis of our action, for that Constitution was the result of grave deliberation on the part of the best talent in the Territory, and I think for that reason it is entitled to our respect. At the same time, many persons here do not feel — I know it from the remarks made about me here — like taking up with old clothes. Still, I think we had better take the last Constitution as our basis. But I think, however, that we cannot get along with the work with advantage in Committee of the Whole, and I will therefore offer this resolution as a substitute:

Resolved, That there be appointed a standing Committee on Declaration of Rights, whose duty it shall be to report upon the first Article of the Constitution; also to report upon the Executive Committee on Legislative powers, to report on Article IV, also on Executive Department, to report on Article V, also on Judiciary, to report on Article VI, also on Militia, to report upon Article VII, also on Miscellaneous and Article VIII of last Constitution, also on Municipal and other Corporations, to report on Article VIII, also, on Future Amendments, to report on Article IX, which Committee shall also report on Articles X and XI; also, Committee on Education, to report on Article XII, also, on Mode of Administration, to report on Article XIII, XIV, and XV, and that

the Indiana of the late Constitution be appointed from Committee of the Whole; and that the several committees so appointed be requested not to consider themselves limited in their powers to the consideration of the articles referred to them, but are requested to present any amendments thereto they may deem advisable.

Mr. BROWNE. I second the substitute, in order to get it before the house.

Mr. FITCH. I trust that the substitute offered by the gentleman from Humboldt will not be adopted. We have now before us, under the resolution of the gentleman from Storey (Mr. Chapin), the Constitution adopted by the late Convention, and if the amendment of the other gentleman from Storey (Mr. De Long) be adopted, we shall then be in exactly the same condition that we would be if we were to adopt the resolution offered by the gentleman from Humboldt (Mr. Dunne), so far as our practical work is concerned. You take, for instance, the Constitution of Nevada or the Constitution of California, and bring it into Committee of the Whole, and you can there take up the propositions advanced, seriatim, and pass upon them without difficulty. But if committees are appointed upon the different provisions in either of those Constitutions, and consider them, and bring them into the Convention, then, after that, we have got to consider them in Committee of the Whole. We can just as well proceed in the first place in Committee of the Whole, without considering them in a standing committee first, and then in Committee of the Whole afterward. I do not see that anything would be gained, but, on the contrary, it seems to me much valuable time would be lost, by adopting the suggestions of the gentleman from Humboldt.

The question was taken on the substitute proposed by Mr. Dunne, and it was rejected.

The question recurred on the amendment proposed by Mr. De Long.

Mr. KENNEDY demanded the yeas and nays.

[Mr. Fitch in the chair.]

Mr. JOHNSON (the President). It is not my purpose to unreasonably detain the Convention in the course of this discussion, but some views have been expressed which seem to me to call for a reply, and are entitled to the respectful consideration of the Convention. First, it is proposed to adopt the Constitution of Nevada, framed by the late Convention, and rejected by the people, as the basis of our action; and the pending amendment is that the Constitution of California be substituted as such basis of action. We well know that no appropriation has been made to pay the expenses of this Convention, and no inconsiderable part of the expenditures of the late Constitutional body, and, I may say, in all bodies of like nature, assembled under ordinary circumstances, has been the item of printing. Now, if we secure the California Constitution as a basis of action for this body, we will necessarily require a considerable amount of printing, as it will be impossible for us, with that considerate regard which the subject demands, to pass upon the varied subjects treated of, without having them, in some form, presented for our inspection, and this City cannot furnish, in sufficient number, copies of the Constitution of California to supply each member of the Convention; to say nothing of the facilities which would be required for making amendments, and placing them properly before the Convention, so as to be understood. But, on the contrary, if we take the Constitution of the State of Nevada, as adopted by the late Convention, as the groundwork and base of our action, we have it already in print. Several hundred copies of it are accessible, and when the necessity of amendments arises, as doubtless it will, we can use those printed copies, separating the different parts, and so obviate the necessity of any expense in the item of printing, and, at the same time, furnish all needed information. I speak without any pride of opinion in this matter, although, as most of you know, I had considerable hand in the framing of that document. I care nothing for that; I want the Convention to adopt a good, loyal Constitution, and one which will receive the indorsement of our respective constituencies; and I care not whose handiwork it may be. If it is such as to secure us a good State Government I am content.

Again, as has been correctly remarked by the gentleman from Storey, (Mr. Chapin), the Constitution of California was adopted as the basis of action of the late Convention which framed the Constitution referred to in the original motion. The gentleman from Storey, (Mr. De Long,) has referred to the Constitution of New York. I have had occasion, perhaps more than he has, or if less, then his memory is more at fault, to compare the Constitution of New York with that of California, and I cannot perceive that twenty sections of the one earlier framed, that of New York, has, without some material alterations, been incorporated in the Constitution of California; and I think it would be within the bounds of truth to assert that not even ten consecutive sections of the California Constitution are to be found in the fundamental law of New York. There, the Judicial system is entirely unlike that of California. The same may be said of their Legislative and Executive departments. The Declaration of Rights of California contains not three consecutive lines as embodied in the Constitution of New York. Indeed, in all its essential features, the differences are important and essential. So that, to my mind, the gentleman's argument should have no possible weight. But, on the contrary, the embodied labors of the late Convention has section following section, without the substitution of a word, or change of a single stamp, copied from the Constitution of California as it now exists. In all essential features of the Judicial department, it is word for word with that of California. In the Legislative department it proceeds further, and provides animal wisdom

for a given time, in the infancy of our State Government; but, following in the same beaten track that California has pursued, by the amendments recently adopted by her, after a limited time, their Constitution also proposes biennial sessions of its Legislature.

I might go on and enumerate instance after instance where this Constitution is word for word, and line for line, the same; and I might say article after article have been taken, transferred without change, from the Constitution of the State of California. Now, why should we go back and do this work over again, involving the necessity of this additional expense and trouble, by adopting the Constitution of California as our basis instead of taking something which we have already before us in print, and which we can use for every purpose?

I recognize the force of the gentleman's objection in reference to judicial decisions, and I will say to the gentleman, that in the late Convention, when I advocated the adoption of the Constitution of California as the basis, among the reasons stated by myself and other gentlemen, was this very argument; and I think we have all the advantages to which he refers in reference to that subject, in this instrument. There may have been some changes, but if they are unnecessary we can reject them. I have no doubt there will be disagreement as to many of the features contained in this instrument, but nevertheless, as a basis, it is substantially the same as the Constitution of California, and I think it would be a great auxiliary, and will very much facilitate our labors to adopt the Constitution framed by our predecessors. I hope we shall vote down the amendment and adopt the resolution as proposed by the gentleman from Storey, (Mr. Chapin), taking the Constitution framed for the State of Nevada as the basis of our action.

Mr. TOZER. I am opposed to the amendment offered by my colleague, (Mr. DeLong), and shall vote in favor of the original resolution as presented by my other colleague, (Mr. Chapin.) During the session and debates of the Constitutional Convention which met in this room, I believe, when their labors were well nigh completed, a public meeting was held in Storey County, composed of a goodly number of the citizens of that county; and I was one of a committee of several—I do not know how many—appointed to come down to Carson and confer with our delegates here, expressing our views and the views of the meeting which appointed us, upon that Constitution. The Constitution had been published from time to time, and we were in various ways apprised of its provisions. It was well nigh completed, and it met with entire approval, except in one or two particulars. We came here to confer with our delegates, and with delegates from other portions of the Territory, and we told them that the Constitution, in most particulars, met with our approval, and we should support it heartily and cheerfully, and were in favor of a State organization; but that if the objectionable features referred to were allowed to remain as a part of the Constitution, we should feel it to be our duty to ourselves and to the entire people of the Territory to oppose that Constitution. Those features were retained, and the Constitution met with disapproval and strong resistance, and was defeated. Now I know, from conversations with many people, not only in the county which I have the honor in part to represent, but with people from other portions of the Territory, that this Constitution which I hold in my hand, adopted by the late Convention, will now meet with their approval if those few objectionable features, to which I have referred, are stricken out of it, and if perhaps some few other slight particulars should be amended.

The argument of my colleague (Mr. DeLong) that the old Constitution, if adopted as a basis of the one we are about to frame, would lead to opposition merely on that account, and that the old Constitution might have met with opposition in other particulars besides those which were referred to before the people, and will meet with such opposition now, if taken as a basis for the new one which we are about to form, it seems to me goes for naught. Whatever Constitution we frame, whatever we may adopt as a basis, will most undoubtedly meet with some opposition, and with great opposition, perhaps; but I do not think that any Constitution can be framed by this Convention which will be more nearly perfect, and more in accordance with the general views and wishes of the people of this Territory, than the one which was formed by the late Convention, with the exceptions to which I have alluded.

For these reasons, and for many others which I shall refrain from giving at this time, I hope that the original resolutions as proposed by my colleague (Mr. Chapin) will prevail.

[The PRESIDENT in the Chair.]

Mr. NOURSE. I only wish to say a word on this matter for the reason that I want to use that word which the well known modesty of the President and the other gentlemen who were members of the former Convention, naturally will not allow them to utter; that is, that I think the Constitution adopted by the former Convention is an excellent one; [laughter], I think that that Convention performed its duty with rare fidelity and ability. If the California Constitution be suitable for us because California is like Nevada, why then the Nevada Constitution is more suitable because Nevada is more like us than California is. [Laughter.] This Constitution has been prepared by our best talent, and with a full consideration of all the other State Constitutions, including that of California.

Now, in regard to the argument of the gentleman from Storey (Mr. DeLong), my reading of the judicial decisions of California has not been such as to inspire me with any profou

respect, either for the decisions of California or for the judges who made them. While there has been much merit in some of them, yet in others, so far as I can judge, I do not think that the decisions according to California, upon matters that have also been decided in other States—and those are after all the bulk of the decisions—are such as would be entitled to or would receive much weight; and I do not think that the bulk of the California decisions upon questions that come up will, after a little while, have as much weight here as they have now. I do not think that disputed questions that may come up under the Constitution, even if they be in the very wording of the Constitution of California, will by any means necessarily be deemed to have been settled by the decisions which the Supreme Court of California may have already made upon the same questions. Therefore, although I submit these views with diffidence—having come here as an immigrant and never having been a Californian—I do not give as much weight to that point which the gentleman makes as to others.

I confess that I am not well posted in the Constitution of California, though I have had occasion to examine it somewhat; but I have examined this Constitution of Nevada with a good deal of care, and I think it is as good a one as I ever did examine. I think there are changes which must be made, on account of the changed condition of our affairs, and some changes in principle, perhaps; but I think that those changes will be much more slight than would have to be made in any other Constitution which we might adopt as a basis to meet the wants of our people. I presume that I shall have myself some propositions to make, and I presume that they will be voted down [laughter]; and others may have propositions to make, and perhaps they will be voted up; but, on the whole, I am satisfied that the Constitution prepared and submitted by the other Convention was not voted down for want of merit in it contained; but it was voted down, rather, because the people did not want a State Government, for which the state of society or the state of litigation has now produced a demand, bringing about a great revulsion in the feeling of the Territory on that subject. I believe that that Constitution, or one substantially like it, if submitted to the people this summer, will carry, and under it we will grow and flourish, and have quite as good a state of society as even California has.

Mr. COLLINS. I hope, also, that the amendment of my colleague (Mr. DeLong) will not prevail. I was a member of the last Constitutional Convention, though I had very little to do with the framing of that instrument, on account of a severe and dangerous attack of illness, and therefore I can be allowed to speak with more fulness and freedom on that subject than those gentlemen present who aided in the labors of that Convention.

In the first place, I agree with the gentleman from Washoe (Mr. Nourse) that this Constitution—I mean the Constitution adopted by the last Convention—is well adapted to meet the wants of the people of this Territory, with a very few modifications. I well remember that in that Convention, before I was taken sick, Judge Bryan, Governor Johnson, Mr. Stewart, Judge Brosnan, and other members, urged with a great deal of force the propriety and importance of adopting the Constitution of the State of California as a basis for the framing of the new Constitution. And I know that I received positive information from two or three of those gentlemen, subsequent to the adoption by the Convention of the California Constitution as a basis, that where it was deemed advisable to incorporate the language of the Constitution of California into the new Constitution, especially in those clauses involving cases which might arise in our own Courts, similar to cases that had already been adjudicated in California, they would incorporate the words fully and completely which they found in the Constitution of California, in order to meet that very want.

And, again, with the gentleman from Washoe, I have not that very profound admiration for the judiciary of California—some of its decisions, at least—that my colleague (Mr. DeLong) has. To my knowledge, members of that Supreme Court, to whom have been accorded great judicial and legal ability, have rendered decisions that subsequently the same Court, being differently constituted, has reversed, and in many instances I would hardly know which side of those judicial decisions I would take. As the gentleman from Washoe has remarked, I do not believe that the decisions of California will be binding, or will to a great extent control the Courts of Nevada. We are different from California. In almost every respect this Territory may be declared to be *sui generis*. There is nothing on the east or the west, the north or the south, like her, and she needs a Constitution based upon her own peculiarities—a Constitution adapted to her own condition—a Constitution that will meet the wants of her mining, her agricultural, and such other interests as she may have.

I regret, however, that my colleague, (Mr. Chapin,) should have presented the resolution he did, providing that we should take up this Constitution section by section. This Constitution was adopted with great care, and, I will say, without any disrespect to this body, by gentlemen equally as competent, I think, as this Convention; and, after its adoption, I took a great deal of pains to read the newspapers of this Territory, and the newspapers of California and Oregon, in their comments in regard to this Constitution, and their general judgment was one of hearty approval. They all agreed, without an exception, that it was one of the best instruments of the kind that had ever been offered to a people. The Convention adopted it after five or six weeks of hard labor, and se-

vious and other Convention. The members of that Convention came from the people, and they represented their constituents faithfully. It was submitted to the people for their ratification, and I have yet to learn of any respectable body of men, I have yet to learn of any newspaper in this Territory, I have yet to learn of any individual on the stump in this Territory, that ever assailed that Constitution in any of its features, save and except those four or five clauses which it is not necessary for me at this time to name. With those four or five exceptions, it was all and every thing that the people could possibly desire. I ask, then, why the change in our feelings at the present time? I ask, then, why not take this Constitution as a basis of our new Constitution?

Let us adopt this Constitution as a basis, and then I would say, scatter it around on every desk, give each member twenty-four hours to write out any amendments or additions which he may think necessary, then let the several propositions be referred to a committee for arrangement and segregation, that we may have clearly and distinctly before the minds of this Convention the several alterations that may be required, and upon those alterations let us agree in Committee of the Whole. Take this course, and I will vouch for it that in five days' time we will have this Constitution completed and ready to be submitted to the people. It occurs to me that this is the most simple, straightforward way. I can hardly see the propriety or reason for pursuing a different course. We will then take up those sections, considering four or five alterations proposed by me, half a dozen by my colleague, as many more by some other gentleman, and so on, and that will be all that will be necessary to consider; after which, I have no doubt, we shall be ready to pass it as a whole. Then why spend our time here, running up a bill against the new State? Or why should the Legislature be called upon to pass upon bills that may be created here in the course of a session of three, four, or five weeks; for we shall be compelled to continue in session for that length of time if we take it up section by section, whereas the work might all be done in four or five days. With a few exceptions, I am willing to give this Constitution my approving vote now; and you are willing, and every other member is willing to give it his vote, after, perhaps, some trifling amendments. But if it is taken up section by section, some member will speak upon a proposition in it, and then I may feel called upon to reply by some remarks, and others may think it necessary to defend their views, and thus we shall spend as much time upon it as though we took the Constitution of some other State. It will all be new work.

I therefore hope that some gentleman will move that each member be requested to make such amendments as he desires within a limited time, and that then we go into Committee of the Whole and act upon them, and that thereafter no new matter be introduced unless, perhaps, by a two-thirds vote. If we adopt this plan, I fully believe that four or five days will be ample to complete our work.

Mr. DELONG. I feel naturally gratified, Mr. President, to find how cordially I am supported in my views, especially by members of my own delegation. [Laughter.] In the first place, I am assailed, or my position is attempted to be certain down, by my exceedingly plausible colleague who rises and insists that it is altogether preposterous to make any such haste as I propose. And then the Chair descends from that high position in which I helped to place him, and gives as a reason why my views should not be adopted, the impossibility of obtaining a sufficient number of copies of the Constitution of the State of California for the consideration of the members of this body. Now, if we adopt my amendment I will agree to furnish every man in the Convention with a copy by to-morrow night, and if Carson is indeed so poor that she has not twenty-five or thirty copies within her limits, I can procure them from my own city by return of mail.

Now one word also in reply to the remarkable attack upon my position that the California Constitution is the offspring of the Constitution of New York. I did not state that it was literally copied from that of New York, but I stated that it was drafted in its general principles from that instrument, and I still so state; and in support of the position I assume, I refer the Chair, or any body else, to the reports of the debates of the Constitutional Convention of California which framed that instrument.

Then it is said that the California Constitution was taken as a basis when this Constitution of Nevada was drawn. If so, then the basis I propose is a correct one, or else the basis upon which this Constitution is drafted must be wrong, one of the two. Now, sir, the basis being correct, why should we adopt as our basis a basis built upon another basis rather than the basis upon which that instrument was originally predicated?

I said there were many other objections to this Constitution of Nevada which were not urged against it on the stump, but which might have been taken up, and would have been, but that it was sufficiently assailable upon the points upon which we did assail it. I still say that, and it is my candid belief, taking this entire instrument into consideration. I do not care if it has been overwhelmed with newspaper compliments. Why, sir, they always compliment such things. Newspaper editors are not always the most competent of men, and do not always know whether a thing is wise or unwise, nor do they always thoroughly examine it; consequently, their endorsement does not go far with me, unless I am sure that they have well considered what they are talking about, which is not commonly the case with newspaper editors. I wish to say further, that the basis being correct, as has been conceded,

with the Constitution of California before us we can make such few amendments as are necessary to make it applicable to our own interests in a very short time.

Now, sir, I should like to know, that we are such a peculiar people as my colleague (Mr. Collins) has asserted, different from the North and the South and the East and the West? I do not so understand it. What is the paramount interest of our Territory? Why, the mining interest. What is the paramount interest of California? The mining interest. Where do our people come from? There are immigrants from every portion of the globe, and so there are in California. Our people and the people of California are alike in that respect. I say I cannot perceive in any leading particular any difference between our wants and the necessities for a good government for us and the wants and necessities of California.

These gentlemen have backed up their views by extolling the Supreme Court of California, and even my worthy friend, the immigrant, as he styled himself, informs us that he differs with that Court in its decisions, and in company with my colleague, (Mr. Collins,) he assails the character of the decisions of the Supreme Court of California. Now I think I know the real objection that my worthy colleague has to that Court, and its jurisprudence. I know that that gentleman has entertained a strong antipathy to the Supreme Court of California, ever since the time when that Court gave, as the saying was, "the law to the North, and the nigger to the South," in the decision involving the right to hold the slave Archie. But I know that there are men who have held positions upon that Supreme Court Bench, whose equals as lawyers, and as judges, are not to be found in this Territory or upon the Pacific coast; and in making this I believe I shall be borne out by the entire legal profession in this Territory, and in California also. I know that occasionally some rather shabby decision may have been made, following, perhaps, on the heels of some unworthy purpose; but still, as a general thing, I guarantee that the decisions of the Supreme Court of California will not be overturned by the California Courts hereafter, and hardly can be by our Courts here. Then if my views on this subject are correct, the adoption of the California Constitution as a basis will save this people an immense deal of litigation.

I made this proposition, well knowing that I should meet with a great deal of opposition—that kind of opposition which is founded upon that principle which leads the indulgent and delighted mother to imagine the homeliest baby in Christendom to be a beauty, and to claim that others ought to view it in the same way. I know very well that the members of the Convention which framed this Constitution would be likely to endorse it, but I hardly expected that their converts would number so many that they would be able to carry it in this Convention. At all events, I have considered it my duty to urge the adoption of the California Constitution as a basis. I believe it is economy of time, and if we take it up section by section, and consider it, I do not believe that a dozen features of it will ultimately be amended by this Convention; while I know that this Constitution of Nevada, if it is taken as the basis, will receive multifarious amendments. This instrument is filled with legislation, and the people have shown that they are opposed to legislation in the Constitution. It fixes the salary of State officers; it ties the hands of the Legislature, so as to give it scarcely anything to do; and I recollect that that feature in particular met with the greatest amount of sarcasm last fall. It was said then, and very justly too, that the Constitutional Convention which met one year ago, seemed to be impressed with the idea that it contained the only wise, just, true, and honest men that were ever going to be, or ever could be got together in this Territory, and that they consequently went to work to legislate, to fix salaries, and to do everything else, and left the Legislature nothing whatever to do but to enact into laws those strange and wild provisions which are to be found in no other fundamental law in Christendom. I know that these things have had weight with many men, and I am satisfied that much more of opposition will be manifested against our work, if we take this Constitution of Nevada as a basis, than if we take as our basis that which they say was the basis of this, namely, the Constitution of the State of California.

Mr. EARL. I offer this resolution as a substitute:—

Resolved, That each member of this Convention be requested to hand in, by to-morrow, at ten o'clock, A. M., such amendments and changes as he may deem necessary to be made in the Constitution formed for the so called State of Nevada; and that such changes shall be considered in Committee of the Whole, and the remainder of the Constitution shall be adopted in Committee of the Whole to-morrow.

Mr. FITCH. I rise to a point of order. There is already an amendment pending, and the substitute is not, therefore, in order.

The PRESIDENT. A substitute was offered, which has been voted down, and the question now is upon the amendment of the gentleman from Storey, (Mr. DeLong.) The Chair thinks the substitute is in order.

Mr. DeLONG. I would like to have the time changed. I think to-morrow morning would give us too short a time.

Mr. EARL. It seems to me that this resolution will save us torrents of talk. All we want is to get on with our business, and in this way we can cut short an immense amount of argument. This Constitution is undoubtedly as good a one as we can expect to get up. We have had the experience of those who have gone before us, and they have given their careful attention to the subject, and all we need is to make a few changes. So far as I am concerned I have already taken a copy of it, and marked in it all the changes I desire to pro-

pose. I think others can do the same in a short time, and in that way I have no doubt we can get through our work in a few days.

Mr. NOURSE. I would like myself to change that resolution, so as make it apply only to a portion of the instrument. It seems to me that it is rather forcing matters to require us to examine the whole thing before to-morrow morning, and be prepared then to offer our amendments, or else to be cut off, finally. It is more of a task than I can perform, for one, to read through, and carefully consider this whole document; and I suggest the propriety of only taking the first three articles for to-morrow, and then two or three more for the next day, and so on. It strikes me that the resolution, as it stands, is slightly overrating our ability.

Mr. EARL. I will accept an amendment, if the gentleman desires, requiring the amendments to be offered to all that part of the Constitution up to the fifth Article.

Mr. FITCH. I will make a suggestion, which, if adopted, will enable us to save several days' time. If we take up some of the first of these Articles first—the Bill of Rights, the right of suffrage, and other things liable to provoke discussion—we shall be likely to occupy several days' time in their consideration. This being the early part of the session of the Convention, gentlemen will feel more at liberty to speak at length. But if we leave those things, and commence in the middle, going through the Constitution to the end, and leaving those controverted subjects to the last, probably members will be considerably tired of sitting here, and not disposed, therefore, to occupy so much time in the consideration and discussion of those sections. The latter portion of the Constitution will not lead to much discussion, and in the way I have proposed, we can shorten the time considerably.

Mr. EARL. Perhaps, then, we had better commence with Article VIII, and consider the latter portion of the Constitution first.

Mr. CROSMAN. I think there had better be an amendment to this substitute, if it is going to be adopted, providing that a standing committee be appointed upon the schedule. That is a matter, it strikes me, which it would be impossible to arrange in the manner proposed by either of the resolutions originally offered, or the substitute. It strikes me that it is necessary to have a committee on the schedule to arrange for the change from the Territorial to the State organization, and for that reason I offer an amendment to the substitute, that a committee of five be appointed upon the schedule.

The PRESIDENT. I think gentlemen are proceeding too fast. We have here, first, a proposition to adopt the old Constitution as a basis; then an amendment to adopt the Constitution of the State of California as a basis; and finally a substitute is offered for the latter. I think no further amendments can be entertained at this time. If the Convention will tolerate a suggestion, I would say that the schedule should be the last matter to consider, because everything else must be first proposed and acted upon, before you can know how to make it harmonious in all its different parts. I trust that gentlemen will not propose amendments so that that we shall lose sight of our starting point. The question was, first, on the resolution to adopt the Constitution of Nevada as a basis; then on the amendment to that, adopting the Constitution of California; and now the question comes on the substitute or amendment, offered by the gentleman from Storey, (Mr. Earl.)

Mr. DeLONG. I rise to a point of order. It is, that the proposition of my colleague, (Mr. Earl), is not a substitute, because it does not relate to the subject matter of the original motion.

The PRESIDENT. It embraces a part, at least, of the subject matter; but the Chair will suggest that it will simplify matters to take the vote first on the original proposition.

Mr. EARL. In order to get a vote upon that proposition, I will withdraw my motion for the present, and after the vote is taken I will offer my resolution.

Mr. CHAPIN. I am glad the gentleman has withdrawn it, for I am not willing to ask members who are comparatively unacquainted with it to take this whole document and swallow it at once, without even reading it, or having an opportunity of intelligently passing upon it. I believe we ought not to do that.

The PRESIDENT (interrupting.) The only question now is on the original motion, with the pending amendment of the gentleman from Storey (Mr. DeLong) to substitute the Constitution of California.

The question was taken on Mr. DeLong's amendment, and it was not agreed to.

The question recurred on the original resolution offered by Mr. Chapin.

Mr. EARL. I will now offer my resolution as an amendment to that resolution.

The Secretary read the proposed amendment, which had been modified, as follows:—

Resolved, That each member of this Convention be requested to hand in by to-morrow, at 10 o'clock, A. M., such amendments as he may deem necessary to that portion of the Constitution formed for the so-called State of Nevada which commences with Section 2 and continues to the end of said Constitution; and that such changes be considered in Committee of the Whole to-morrow, and that the remainder of said Constitution be adopted.

Mr. HAWLEY. Does the gentleman include the schedule?

Mr. EARL. I include all after Section 2.

Mr. NOURSE. I move to amend so as to read, "commencing with Article IV." That will take in the whole Legislative Department, and I think there is likely to be as little discussion there as anywhere. I mean to include only Article IV.

Mr. FITCH. I suggest that we take in Articles IV, V, and VI. That is about as much as we can do in one day's work.

The PRESIDENT. The Chair will suggest

to the gentleman from Storey, (Mr. Earl,) that his motion now embraces the schedule, and gentlemen will see that it will be impossible to complete that until we have completed the balance of the instrument.

Mr. EARL. I suggest that we take up from Article V to Article VIII, inclusive, and consider the remainder. Certainly, it seems to me that any gentleman could take up this whole document, after having had it before him for a month, and no doubt made up his mind upon its provisions, as nearly every gentleman probably has done, and state what changes he thinks are necessary. I, for one, can make all the changes necessary in my opinion between now and to-morrow at 10 o'clock; in fact, I have done so since yesterday, and have marked them all in my copy. I think I will fall back on my original motion, to take it all up from the first to the fifth articles.

Mr. FITCH. I will move, as an amendment, that we commence by taking up Articles III, IV, V, and VI, that is, "the distribution of powers," and the legislative, executive and judicial departments. If that is too much to consider in one day, it is not too much, I think, for gentlemen to go over and prepare their amendments to in one evening. We can take up those four articles, and if we do not succeed in getting through with them in one day, we can take another day for them. I trust the gentleman will not insist on our considering the first and second articles at present, namely, the "Bill of Rights" and the "Right of Suffrage," which would be calculated to produce an immense amount of discussion at this time. I make my motion, Mr. President, upon the hypothesis that the motion of the gentleman from Storey (Mr. Chapin) be adopted, making this Constitution the basis. My amendment will simply be that Articles IV, V, and VI be acted for to-morrow.

Mr. EARL. I will accept the amendment.

Mr. BROSNAN. I do not see the object of this proposition; I cannot see that it economizes time at all. If we are to have discussion upon the first, or upon the second article, it must come at some time, and we may as well have it at once. I am one of those who think that if I have to meet the devil on the way, I would prefer to meet him boldly, in front, at the outset, and then, after overcoming him, my journey is smooth and easy the rest of the way. I therefore see no use in adopting this proposition and commencing at the middle of our work. I think the more direct, as well as the most expeditious way, is to commence with Article I, and go through our work in its regular sequence. If we can get through with Article I, well and good; or if we can finish the first and second Articles in one day, so much the better. At any rate, we shall know that we are progressing on our journey in a consecutive and harmonious manner. I am decidedly opposed to the amendment, the proposition, or the suggestion, whatever it may be called, presented by my colleague on my right, (Mr. Fitch), and I had thought that the proposition made by my other colleague, (Mr. Chapin), as originally made, would cover the whole ground. It may be said that by taking up the first Article in Committee of the Whole, it will be necessary to read it through. Undoubtedly it will have to be read through in Committee of the Whole, and then, after any amendments which may be moved are acted upon, we adopt it in committee and report it to the house, where it is passed, and there is an end of it. When we come to a section that needs amendment, in order to satisfy gentlemen, if we cannot agree readily upon such amendment, the Convention may refer the section to a special committee, to report subsequently, and go on with the consideration of the following sections. I do think that is the best and most expeditious way, and I hope all these amendments will be voted down.

Mr. FITCH. I am perfectly willing, as well as my colleague, to meet the devil boldly in the face; but if it be necessary to have a contest with him, I prefer that it should be limited in duration. I am quite confident that if we commence the deliberations of the Convention by considering the proposition in the first and second Articles—if we begin with the discussion of the much vexed question of the paramount allegiance clause, or the equally vexed question of allowing the right of suffrage to persons who have been in arms against the Government, I am quite sure, from what I have learned of the views of members here, that the discussion will keep us in session till doomsday, or, at least, till the patience of the Convention is worn out, before we come to any conclusion. But let us go on and discuss first the more practical questions—those principles upon which we are to form our local government, and by the time we have disposed of them, we shall perhaps have consumed so much of the time of the Convention, and have so wearied members out with speeches, that they will be willing to let us off with perhaps only one day upon "paramount allegiance," and another on the "right of suffrage." They will say, "Any way to get rid of it and enable us to go home." But if we get into these discussions now, they will consume four or five days at least. For these reasons I am for postponing those sections which are likely to provoke discussion until we have disposed of and settled those which are not likely to provoke discussion.

Mr. BANKS. I understand the question to be this: shall we commence at the beginning of our work and pursue it regularly in the ordinary course of a business-like transaction, or shall we commence in the middle of our work? Now, any man of ordinary experience in life would say, upon general principles, that it is best to commence at the beginning. What reasons, then, have we heard offered for changing the rule which governs in the ordinary affairs of life? Simply such reasons as are based upon

the assumption that we are not a grave, deliberative body, but a mere set of schoolboys, incapable of regulating our own conduct; incapable of doing what we all feel to be necessary and right, and then going home. But I think the logic of these gentlemen is singularly defective in this particular, that they insist upon our putting off the hardest work until the last part of the session. On the other hand, I insist that it will be much better to take up those questions which are likely to consume most time at the first, because that will give all of us an opportunity to investigate the remaining portions of the Constitution at our leisure unbeknown, while in public here we are considering and debating those difficult propositions. It will give to us opportunity in the evenings and mornings, and at all times when we are not here in session, to consider the grave questions arising in this Constitution. I confess, for one, that although I have had considerable experience in deliberative bodies, yet I am not prepared, and will not be prepared until I have heard everything within the bounds of reason which is to be offered, pro and con., concerning each of these propositions, to decide what will be my vote upon them. If gentlemen here are so wise as to be able to sit down in a room by themselves, and without any discussion, or comparison of views, decide what they will or will not do in every case, why, all I can say is, that they possess more wisdom than any man with whom it has been my fortune to communicate in regard to the formation of views. Therefore, I hope that the suggestion just now made by the gentleman from Storey, (Mr. Brosnan), will prevail. Let each man, at his leisure time, prepare any amendments he may deem necessary, bring them in on paper, and present them. I think that we ought to take up the first Article and pass through it, and then the next Article, in the ordinary course of business, and so on till we get through with the whole instrument, and when we get through we shall be ready to adjourn.

Mr. EARLE'S amendment was modified so as to read as follows:—

Resolved, That each member of this Convention be requested to hand in to-morrow, at 10 o'clock, A. M., such amendments as he may deem necessary to that portion of the Constitution formed for the so-called State of Nevada, as may be embodied in the IIId, IVth, Vth and VIth Articles, and that the said Articles be considered in Committee of the Whole, to-morrow.

The question was taken, and the amendment was not agreed to.

The question was taken on the original resolution, as proposed by Mr. Chapin, and it was agreed to.

So the Constitution framed by the Convention of 1863 was adopted as a basis, as follows:—

PREAMBLE.

We, the people of the State of Nevada, grateful to Almighty God for our freedom, in order to secure its blessings, insure domestic tranquility, and form a more perfect Government, do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

Section 1. All men are by nature free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and pursuing and obtaining safety and happiness.

Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. But the paramount allegiance of every citizen is due to the Federal Government, and no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith, or perform any act tending to impair, subvert or resist the supreme authority of the Government of the United States. The Constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whenever any portion of the States, or people thereof, attempt to secede from the Federal Union, or resist the execution of its laws, the Federal Government may, in accordance with the Constitution, employ armed force in compelling obedience to its authority.

Sec. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law; and, if three-fourths of the jurors agree upon a verdict, it shall stand and have the same force and effect as a verdict by the whole jury; provided, the Legislature, by a two-third vote of each branch thereof, may require a unanimous verdict notwithstanding this provision.

Sec. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Sec. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require the suspension.

Sec. 6. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

Sec. 7. All persons shall be bailable by sufficient sureties; unless for capital offenses, when the proof is evident or the presumption great.

Sec. 8. No person shall be held to answer for capital or otherwise infamous crime, (except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature,) except on presentment or indictment of a grand jury; and in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation having been first made or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterwards made.

Sec. 9. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted or exonerated; and the jury shall have the right to determine the law and the fact.

Sec. 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for the redress of grievances.

Sec. 11. The printing press shall ever stand to every citizen, or body of citizens, alike free, and every person shall be responsible for the manner in which he uses it, but no law shall ever be made to restrain the right thereof.

Sec. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace, and in time of war no appropriation for a standing army shall be for a longer time than two years.

Sec. 13. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war except in the manner to be prescribed by law.

Sec. 14. Representation shall be apportioned according to population.

Sec. 15. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted; and neither shall the body of any debtor, within this State, after the rendition of a judgment or decree for a sum due, be imprisoned, unless he shall refuse to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or shall conceal his property for the purpose of evading the payment of his debts, or shall fraudulently have disposed of the same, contrary to law, or shall be unable to pay a fine assessed for a violation of law.

Sec. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Sec. 17. Slaveholders who are or who may hereafter become bona fide residents of this State, shall enjoy the same rights, in respect to the possession, management, and inheritance of property, as native-born citizens.

Sec. 18. Neither slavery nor involuntary servitude, except for the punishment of crimes, shall ever be tolerated in this State.

Sec. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons or things to be seized.

Sec. 20. Treason against this State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort.

Sec. 21. This enumeration of rights shall not be construed to impair or deny others retained by the people.

ARTICLE II.

RIGHT OF SUFFRAGE.

Section 1. Every white male citizen of the United States, (and Indians owing allegiance thereto by the Constitution,) of the age of twenty-one years and upwards, who shall have resided in the State one month next preceding the election at which he offers to vote, and who shall have paid a State or county tax which shall have been assessed at least thirty days before the election, shall enjoy the right of voting for all officers that now are or hereafter may be elected by the people, and upon all questions which may be submitted to the vote of the people.

Sec. 2. No person who has been or may be convicted of treason, or felony, in any State or territory of the United States, unless pardoned in due manner, and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government, and he fully restored, or disabled person, shall be entitled to the privilege of an elector.

Sec. 3. For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence while employed in the service of the United States, or of this State, nor while a student of any seminary of learning.

Sec. 4. No soldier in the army of the United States shall be deemed a resident of this State in consequence of being stationed within this State.

Sec. 5. The right of suffrage shall be enjoyed by all persons otherwise entitled to the same who may be absent from this State in the military or naval service of the United States; provided, that the payment of a poll tax, or compliance with such a law, shall not be required as a condition to the right of voting. Provision shall be made by law, regulating the manner of voting, holding elections, and ascertaining the result of such elections.

Sec. 6. Elections for State officers, and members of the Legislature, shall be held on the first Monday in October, (unless the day shall be changed by the Legislature,) in each year, and all such elections shall be by ballot.

Sec. 7. All elections by the people shall be by ballot, and all elections by the Legislature, or by either branch thereof, shall be viva voce.

Sec. 8. Provision shall be made by law for the registration of the names of all persons entitled to vote, at any place of voting, and no person shall be permitted to vote at any election, or any place of voting, unless his name shall be registered in the list of voters for the township or ward in which he offers to vote, if he shall be required by law to register his name.

Sec. 9. The Legislature shall provide, by law, for the payment of the expenses of such persons as may be appointed to receive the votes of the inhabitants of any township, in the State, who, on account of sickness, may be unable to go to the polls on the day of election, and may direct the manner in which the votes of such persons shall be received and returned.

Sec. 10. All citizens of the United States, and persons of the Territory of Nebraska, at the time provided in this Constitution for the admission of the said Territory into the Union, who shall have resided in the Territory one year, and in the county or district in which they offer to vote, ten days, next preceding the election, and who shall possess the other qualifications of electors herein provided, shall be entitled to vote for the election of all officers to be elected at such election, and upon the question of adopting or rejecting this Constitution.

ARTICLE III.

DISTRIBUTION OF POWERS.

Section 1. The powers of the Government of the State of Nebraska shall be divided into three separate departments—the Legislative, the Executive, and Judicial—and no persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

Section 1. The Legislative authority of this State shall be vested in a Senate and Assembly, which shall be designated The Legislature of the State of Nebraska, and the enactments of such Legislature shall be had in the name of the people of this State.

Sec. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday in January next ensuing the election of the members, unless the Governor of the State shall in the interim convene the Legislature by proclamation.

Sec. 3. The apportionment of this Territory shall be adjusted by the Legislature at the first session after the admission of the State into the Union, and after each United States census thereafter, at the first session holden next after the return of each census.

Sec. 4. Senators shall be chosen at the same time and places as members of the Assembly, by the electors and districts which they represent, and the number of Senators shall not be less than one-third, nor more than one-half of that of the members of the Assembly.

Sec. 5. Senators shall hold their offices for the term of two years from the day next after their election.

Sec. 6. Each House shall judge of the qualifications, elections and returns of its own members, choose its own officers, (except the President of the Senate,) determine the rules of its proceedings, and keep a journal of its proceedings, and publish the same, (except such parts as require secrecy,) and the yeas and nays of the members of either House, on any question, shall, at the desire of any two members present, be entered on the journal.

Sec. 7. Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the members of Assembly shall not be less than two-thirds, nor more than one-half of that of the members of the Assembly.

Sec. 8. Each House shall judge of the qualifications, elections and returns of its own members, choose its own officers, (except the President of the Senate,) determine the rules of its proceedings, and keep a journal of its proceedings, and publish the same, (except such parts as require secrecy,) and the yeas and nays of the members of either House, on any question, shall, at the desire of any two members present, be entered on the journal.

Sec. 9. Either House, during the session, may punish, by imprisonment, any person, not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behavior in its presence, but such imprisonment shall not extend beyond the next adjournment of that session.

Sec. 10. No member of the Assembly shall, during the time for which he shall have been elected, receive any civil appointment within this State, from the Governor, the Senate, or the Assembly, or from the election of any officer of which number the Senate shall not

Sec. 3. The compensation of each State Senator and Representative shall be fixed by law, and paid out of the State Treasury, but no increase of such compensation shall take effect during the term for which any Senator or Representative may have been elected. No person holding any office under the United States, or any foreign power, shall be eligible to any civil office of profit under this State; provided that postmasters whose compensation does not exceed five hundred dollars per annum, or commissioners of deeds, shall not be deemed an office of profit.

Sec. 4. Any person who shall be convicted of the embezzlement or defalcation of the public funds of the State, or who may be convicted of having given or offered a bribe to procure his election or appointment to office, or procured a bribe or reward to aid in the appointment of others for any other person, shall be disqualified from holding any office of profit or trust in this State.

Sec. 5. Members of the Legislature shall be privileged from arrest on civil process during the session of the Legislature, and for fifteen days next before the commencement of each session.

Sec. 6. When vacancies occur in either House, the presiding officer shall issue writs of election to fill such vacancy.

Sec. 7. A majority of all the members elected to each House shall constitute a quorum to transact business, but a smaller number may adjourn from day to day; and may compel the attendance of absent members, in such manner and under such penalties as each House may prescribe.

Sec. 8. Each House shall keep a journal of its own proceedings, which shall be published, and the ayes and noes of the members of either House on any question shall, at the desire of any three members present, be entered on the journal.

Sec. 9. The doors of each House shall be kept open during the session, and neither shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting at the time.

Sec. 10. Any bill may originate in either House of the Legislature, and all bills passed by one may be amended in the other.

Sec. 11. Each law enacted by the Legislature shall embrace but one subject, and matters properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revived or amended by reference to its title; but, in such case, the act revived, or section so amended, shall be re-enacted and published at length.

Sec. 12. Every bill shall be read by sections on three several days, in each House, unless, in case of emergency, two-thirds of the House, where such bill may be pending, shall deem it expedient to dispense with this rule; but the reading of a bill by sections, on the final passage, shall in no case be dispensed with, and the vote upon the passage of every bill or joint resolution, shall be taken by yeas and nays, to be entered on the journals of each House; and a majority of all the members elected to each House, shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed, shall be signed by the presiding officers of the respective Houses.

Sec. 13. No money shall be drawn from the Treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public money shall be attached and published with the laws at every regular session of the Legislature.

Sec. 14. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: Regulating the jurisdiction and duties of Justices of the Peace and of Constables; for the punishment of crimes and misdemeanors; regulating the practice of courts of justice; providing for changing the venue in civil and criminal cases; granting divorces; changing the names of persons; locating roads, town plats, cemeteries; incorporating cities, towns or villages, or changing their charters; for the assessment and collection of taxes for State, county or road purposes; providing for the support of common schools, and fixing the rate of interest on the loan and investment of the same; providing the manner in which fractional parts of townships may be disposed of; providing for the management of common schools; regulating the rate of interest on money; providing for the opening and conducting of elections, and designating the places of voting; providing for the sale or mortgage of real estate belonging to minors or other persons laboring under legal disabilities.

Sec. 15. In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

Sec. 16. Provision may be made by general law for the admission of this State or its Territories subsequently to the adoption of this Constitution.

Sec. 17. The enacting clause of every law shall be as follows: The people of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Sec. 18. No lottery shall be authorized by the State, nor shall the sale of lottery tickets be allowed.

Sec. 19. The Legislature shall establish a system of county and township government, which shall be uniform throughout the State.

Sec. 20. The Legislature shall provide for the election of a Board of County Commissioners, in each county, and three County Commissioners shall jointly and individually perform such duties as may be provided by law.

Sec. 21. Laws may be made to exclude from serving as jurors all persons convicted of bribery, perjury, forgery, larceny, or other high crimes, or misdemeanors relating to civil rights; and laws shall be passed regulating challenges, and prescribing the manner of exercising challenges, and prohibiting, under adequate penalties, all undue influences thereto, from power, bribery, menaces, or other improper practice.

Sec. 22. No money shall be drawn from the State treasury on salary or compensation to any officer or employee of the Legislature, or either branch thereof, except by a law in force prior to the session at which the services shall be rendered or such compensation provided by law; and the salary or compensation so fixed shall neither be increased nor diminished so as to apply to any officer or employee of the Legislature, or either branch thereof, at such session; provided, that this restriction shall not apply to the first elected and regular session of the Legislature.

Sec. 23. The first regular session of the Legislature under this Constitution may extend to ninety days, but no subsequent regular session shall exceed sixty days, nor any special session convened by the Governor shall exceed twenty days.

Sec. 24. A homestead not exceeding one hundred and sixty acres of land, outside of the limits of a town or city, or not exceeding one acre within the limits of any town or city, exempted as a residence by the family of the owner, together with all the improvements on the same, of the aggregate value of five thousand dollars, shall be exempt from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon; provided, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife; and laws shall be enacted, providing for the recording of such homestead within the county in which the same may be situated.

Sec. 25. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

Sec. 26. No law shall be passed authorizing married women to convey or incumber real estate.

Sec. 27. The Legislature shall provide for the election, by the people of a Clerk of the Supreme Court, County Clerks, County Recorders, who shall be ex-officio County Auditors, District Attorneys, Sheriffs, County Surveyors, Public Administrators, and other

...ment; which, and by law their duties and compensation; provided, that in the case such compensation shall exceed in the aggregate, an salary and fees in office, the sum of one thousand dollars per annum, in any one of such offices, exclusive of the necessary disbursements upon the discharge of the duties of the office, upon the fiscal, where compensation in fees and salary shall in no case exceed the sum of six thousand dollars per annum, exclusive of expenses necessarily incurred in the discharge of the duties of said office. County Clerks shall be ex-officio Clerks of the County of Record in and for their respective counties.

Sec. 24. The members of the Legislature shall receive an allowance for their services, the sum of eight dollars for each day's actual attendance during their legislative duties, or any session or special session, and thirty cents for each mile traveled by the usual route in going to and returning from the place of meeting of the Legislature, and no further compensation or allowance shall be made to any member of the Legislature for the performance of his official duties; provided, that an appropriation may be made for the payment of such contingent expenses as members of the Legislature may incur for postage, express charges, newspapers, and stationery, not exceeding the sum of forty dollars for any general or special session, to each member; and further provided, that the Speaker of the Assembly, and Lieutenant Governor, as President of the Senate, shall each, during the time of their actual attendance on such general or special session, receive an additional allowance of two dollars per diem.

Sec. 25. In all elections for United States Senators, such elections shall be held in joint convention of both Houses of the Legislature. It shall be the duty of the Legislature which convenes next preceding the expiration of the term of each Senator, to elect his successor. If a vacancy in such Senatorial representation from any cause occurs, it shall be the duty of the Legislature then in session, or of the succeeding session thereof, to supply such vacancy. If the Legislature shall at any time as herein provided, fail to unite in a joint convention within twenty days after the commencement of the session of the Legislature for the election of such Senator, it shall be the duty of the Governor, by proclamation, to convene the two Houses of the Legislature in joint convention, within not less than five days nor exceeding ten days from the publication of his proclamation, and the joint convention, when so assembled, shall proceed to elect the Senator as herein provided.

Sec. 26. Every bill which may have passed the Legislature, shall, before it becomes a law, be presented to the Governor. If he approves it, he shall sign it; but if not he shall return it, with his objections, to the House in which it originated, which shall cause such objections upon the journal, and proceed to reconsider it. If, after such reconsideration, it again pass both Houses by ayes and noes, by a majority of two-thirds of the members elected to each House, it shall become a law notwithstanding the Governor's objections. If any bill shall not be returned within five days after it shall have been presented to him, (Sunday excepted,) sufficient of the day on which he received it, the same shall be a law, in like manner as if he had signed it, unless the Legislature, by its final adjournment, prevent such return, in which case it shall be a law, unless the Governor, within ten days next after the adjournment, (Sunday excepted,) shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the Legislature at its next session, in like manner as if it had been returned by the Governor; and if the same shall receive the vote of two-thirds of the members elected to each branch of the Legislature, upon a vote taken by ayes and noes, to be entered upon the journals of each House, it shall become a law.

ARTICLE V.

EXECUTIVE DEPARTMENT.

Section 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be Governor of the State of Nevada.

Sec. 2. The Governor shall be elected by the qualified electors at the time and places of voting for members of the Legislature, and shall hold his office for two years from the time of the installation and until his successor shall be qualified.

Sec. 3. No person shall be eligible to the office of Governor, who is not a qualified elector, and, who, at the time of such election, has not attained the age of twenty-five years; and who, except at the first election under this Constitution, shall not have been a citizen resident of this State for two years next preceding the election.

Sec. 4. The returns of every election for Governor, and other State officers voted for at the general election, shall be sealed up and transmitted to the seat of government, directed to the Secretary of State, and on the third Monday of December succeeding each election, the Chief Justice of the Supreme Court and the Associate Justices shall meet at the office of the Secretary of State, and open and canvass the election returns for Governor and all other State officers, and forthwith declare the result and publish the same of the candidates elected. The persons having the highest number of votes for their respective offices shall be declared elected, but in case any two or more have an equal and the highest number of votes for the same office, the Legislature shall by joint vote of both Houses, elect one of said persons to fill said office.

Sec. 5. The Governor shall be Commander-in-Chief of the Military forces of this State, except when they shall be called into the service of the United States.

Sec. 6. He shall transact all executive business with the officers of the Government, civil and military, and may require information, in writing from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

Sec. 7. He shall see that the laws are faithfully executed.

Sec. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission, which shall expire at the next election and qualification of such officer.

Sec. 9. The Governor may, on extraordinary occasions, convene the Legislature, by a proclamation, and shall state to both Houses, when organized, the purpose for which they have been convened, and the Legislature shall transact no legislative business except that for which they were specially convened, or such other legislative business as the Governor may call it the attention of the Legislature while in session.

Sec. 10. He shall communicate, by message, to the Legislature, at every regular session, the condition of the State, and recommend such measures as he may deem expedient.

Sec. 11. In case of a disagreement between the two Houses, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; provided, it be not beyond the time fixed for the meeting of the next Legislature.

Sec. 12. No person shall, while holding any office under the United States Government, hold the office of Governor, except as herein expressly provided.

Sec. 13. The Governor shall have the power to suspend the collection of fines and forfeitures, and to grant reprieves for a period not exceeding sixty days (during the time of conviction, but all offenses, except in cases of impeachment. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. And if the Legislature should fail or refuse to make final disposition of such case, the sentence shall then be enforced at such time and place as the Governor by his order may direct. The Governor shall communicate to the Legislature, at the beginning of every session, every case of fine or forfeiture remitted, or reprieve, pardon, or commutation granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, and the date of the remission, commutation, pardon, or reprieve.

Sec. 14. The Governor, Justices of the Supreme Court, and Attorney General, or a major part of them, of

ARTICLE VI.

ARTICLE VII.

SEC. 6. The Legislature shall provide for the organization of cities and villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, except for the payment of the necessary expenses of the same.

SEC. 7. The State shall not become an owner or stockholder in any bank, or in any corporation, except such as may be created by or under the authority of this State for the purpose of providing for the safe investment of the funds belonging to the State, or any trust fund: Provided, That this shall not forbid the ownership of stock by the State in any railroad or other corporation, formed for any work of internal improvement which may be undertaken by the State, or the ownership of stock by the State in any corporation which may be formed for the purpose of constructing a railroad from any point on the northern boundary of this State, to any point on the Mississippi river; but no law to issue bonds shall be enforced, or become operative, until the same shall be submitted to the people.

SEC. 8. No county, city, town, or other municipal corporation, shall become a stockholder in any joint stock company, corporation, or association whatever, or loan its credit or aid of any such company, corporation or association.

ARTICLE IX.

PUBLIC AND STATE DEBT.

SECTION 1. The fiscal year shall commence January 1st.

SEC. 2. The Legislature shall provide for an annual tax sufficient to defray the estimated expenses of the State for each fiscal year; and whenever the expenses of any year shall exceed the income, the Legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of each ensuing year, for two years.

SEC. 3. For the purpose of enabling this State to contract for the construction of such canals, railroads, or other works of internal improvement, as it may deem necessary, or for the purpose of defraying extraordinary expenses, the State may contract public debts; but such debts shall never, in the aggregate, exclusive of debts which may be contracted for the purpose of repelling invasion, suppressing insurrection, or defending the State in time of war, [provided, that the further amount of indebtedness authorized by Article VIII. of this Constitution, shall be deemed legal and valid whenever any debt shall be incurred in accordance with the provisions therein expressed;] and said debts shall be payable in the manner, and within the time prescribed by the Legislature; and said debts shall be paid before any other indebtedness of the State, except the ordinary expenses of the State government, and shall be used for the purposes specified, and for no other purpose whatever. Every such debt shall be authorized by law for some single work or purpose, to be distinctly specified therein, and every such law shall provide for levying an annual tax sufficient to pay the interest accruing annually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished until the principal and interest of such debts shall have been wholly paid. Every contract of indebtedness shall distinctly state the purpose for which the money is borrowed, and the amount of the same, when all the debts and liabilities of the State, whether contracted or assumed, shall be paid and satisfied, except in cases of money deposited with or loaned to the State, moneys expended and liabilities incurred for the defence of the State, during the time it was in a state of war, or which may be necessary to repel invasion, suppress insurrection, or defend the State in time of war.

SEC. 4. The State shall never assume the debts of any county, town, city, or other municipal corporation whatever, unless such debts have been created to repel invasion, suppress insurrection, or defend the State in time of war.

SEC. 5. No county, city, town, or other politic or State debt whatever, shall be valid, for the payment of which there are no funds in the treasury, except the same debts or liabilities as may be contracted by the third Section of this Article.

ARTICLE X.

TAXATION.

SECTION 1. The Legislature shall provide, by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes. Every provision re-

ARTICLE XI.

SALARIES.

SECTION 1. The Governor shall receive an annual salary of six thousand dollars. The Secretary of State shall receive an annual salary of four thousand dollars. The State Treasurer shall receive an annual salary of three thousand dollars. The Auditor of Public Accounts shall receive an annual salary of three thousand dollars. The Attorney General shall receive an annual salary of three thousand dollars. The Superintendent of Public Instruction shall receive an annual salary of two thousand dollars. Their salaries shall be paid quarterly; and officers shall receive no fees or perquisites whatever, over and for the performance of any duties connected with their offices.

ARTICLE XII.

EDUCATION.

SECTION 1. The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. It shall provide for the election by the people [at such time as the judiciary may be elected] of a Superintendent of Public Instruction, whose term of office shall be two years from the first Monday of July succeeding such election, and until the election and qualification of his successor; and whose duties shall be prescribed by law.

SEC. 2. The Legislature shall provide for a system of common schools, by which a school shall be kept without charge for tuition, at least three months in each school district, or more than one month in every year; and any school district neglecting to maintain and sustain such a school may be deprived of the proportion of the interest of the public school fund during such neglect. The Legislature may, within two years, pass such laws as shall make it compulsory with parents and guardians that all white children under their charge, between the ages of five and fourteen years, shall receive educational instruction for at least three months in each year, unless physically or mentally incapacitated; but no compulsory system shall be allowed at any public school established by them.

SEC. 3. All lands, including the five hundred thousand acres of land granted to the State by the provisions of an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841; and all proceeds of lands that have been or may be granted, or appropriated by the United States to this State; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all lands tendered to the State that may be donated for educational purposes; all the proceeds derived from any or all said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be diverted to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties in proportion to the number of persons between the ages of six and eighteen years in the district entitled thereto. And the Legislature shall provide for the sale of saleable land warrants to dispose of the several lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds or the bonds of this State; provided, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; and provided, further, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

SEC. 4. The Legislature shall provide for the establishment of a State University, or Agricultural College, with a Mining Department, which shall be free to all white youths between the ages of fourteen and twenty-one years, possessing such qualifications as may be prescribed by the Board of Regents; and white persons or guardians are citizens of this State.

SEC. 5. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other taxes provided for the support and maintenance of said University or Agricultural College, and common schools;

provided, that at the end of ten years they may reduce said tax to one-quarter of one mill, on each dollar of taxable property.

Sec. 4. The Governor, Secretary of State, and the Superintendent of Public Instruction, shall, for the first four years, and until their successors are elected and qualified, be a Board of Regents, to control and manage the affairs of the University, or Agricultural College, and the funds of the same, under such regulations as may be provided by law; but the Legislature shall, at the expiration of that time, provide for the election of a Board of Regents, and define their duties.

Sec. 5. The Board of Regents shall, from the interest accruing from the first funds which may be paid into their control immediately organize, and maintain the said Mining Department, in such manner as to make it the most effective and useful.

ARTICLE XIII.

MILITIA.

Section 1. The Legislature shall provide by law for the organizing and disciplining the militia of this State, for the efficient encouragement of volunteer corps, and the safe keeping of the public arms.

Sec. 2. The Government shall have power to call out the militia to execute the law of the State, or to suppress insurrection, or repel invasion.

ARTICLE XIV.

PUBLIC INSTITUTIONS.

Section 1. Institutions for the benefit of the insane, blind, and deaf and dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be prescribed by law.

Sec. 2. A State Prison shall be established, and maintained in such manner as may be prescribed by law, and provision may be made by law for the establishment and maintenance of a House of Refuge for juvenile offenders.

Sec. 3. The respective counties of the State shall provide, as may be prescribed by law, for those inhabitants who, by reason of age and infirmity, or other misfortune, may have claim upon the sympathy and aid of society.

ARTICLE XV.

BOUNDARY.

Section 1. The boundary of the State of Nevada shall be as follows:—

Beginning at the point of intersection of the forty-second degree of north latitude, with the thirty-eighth degree of longitude west from Washington; thence running south on the said thirty-eighth degree of west longitude until it intersects the northern boundary line of New Mexico; thence due west along the northern boundary line of New Mexico until such line intersects the eastern boundary of the State of California; thence northerly along the eastern boundary line of the State of California until such line intersects the forty-second degree of north latitude; thence east with said forty-second degree of north latitude to the place of beginning.

And whenever Congress shall authorize the addition to the Territory or State of Nevada of any portion of the territory on the easterly border of the foregoing defined limits, not exceeding in extent one degree of longitude, the same shall thereupon be embraced within and become a part of this State. And furthermore provided, that all such territory lying west of and adjoining the boundary line herein prescribed, which the State of California may relinquish to the Territory or State of Nevada, shall thereupon be embraced within and constitute a part of this State.

ARTICLE XVI.

MISCELLANEOUS PROVISIONS.

Section 1. The seat of Government shall be at Carson City, but no appropriation for the erection or purchase of capitol buildings shall be made during the next six years.

Sec. 2. Members of the Legislature, and all officers, Executive, Judicial, and Ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation:—

"I ——— do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any State, Convention or Legislature to the contrary notwithstanding; and furthermore, that I do this with a full understanding of the meaning and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear or affirm that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly within the limits of such challenge, or encounter, since the adoption of the Constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or during any such duel, during my continuance in office. And further, that I will well and faithfully perform all the duties of the office of ——— on which I am about to enter; so help me God."

Sec. 3. No person shall be eligible to any office who is not a qualified elector, or who has fought or been in any manner concerned in a duel since the adoption of this Constitution.

Sec. 4. The general election shall be held on the Tuesday next after the first Monday of November.

Sec. 5. The aggregate number of members of both branches of the Legislature shall never exceed seventy-five.

Sec. 6. The term of State officers elected at the first election under this Constitution, shall continue until the Tuesday after the first Monday of January, A. D. 1867, and until the election and qualification of their successors.

Sec. 7. The Sheriffs, County Clerks, County Treasurers, County Judges, and County Recorders, shall hold their offices at the county seats of their respective counties.

Sec. 8. The Legislature shall provide for the speedy publication of all statute laws of a general nature, and for such judicial decisions as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person; provided, that no judgment of the Supreme Court shall take effect and be operative until the opinion of the Court in such case shall be filed with the Clerk of said Court, and notice thereof given by said Clerk in some newspaper published at the place of holding said Court, or nearest thereto.

Sec. 9. The Legislature may, at any time, by a vote of two-thirds of the members elected to each branch thereof, provide by law for increasing or diminishing the salaries or compensation of any of the officers (except judicial) whose salaries or compensation is fixed in this Constitution; provided, no such change of salary or compensation shall apply to any officer during the term for which he may have been elected.

Sec. 10. All officers whose election or appointment is not otherwise provided for, shall be chosen or appointed as may be prescribed by law.

Sec. 11. The tenure of any office not herein provided for may be declared by law, or when not so declared, such office shall be held during the pleasure of the authority making the appointment; but the Legislature shall not create any office, the tenure of which shall be longer than four years.

Sec. 12. A State Printer shall be elected at the same time and places, and in the same manner, and for the same term, as the Governor. He shall do all the public printing for the State which may be prescribed by law. The rates to be paid him for such printing shall be fixed by law.

Sec. 13. The Governor, Secretary of State, State Treasurer, State Controller, and Clerk of the Supreme Court, shall keep their respective offices at the seat of Government.

Sec. 14. The enumeration of the inhabitants of this State shall be taken under the direction of the Legislature in the year 1866, and 1867, and 1875, and every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States in the year 1870,

ARTICLE XVII.

AMENDMENTS.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives of the Legislature of this Territory; and if the same shall be agreed to by a majority of all the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on the journals of the Houses, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election of Representatives, which shall immediately succeed the session at which the amendment or amendments were proposed; and if in the session next after the election of Representatives as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House of the Legislature, then it shall be the duty of the Governor to cause the same to be published three months before the next general election, in all the newspapers in the Territory, and to recommend the consideration of such amendment or amendments to the people in such manner as he may think proper; and such amendment or amendments shall be submitted to the people at the next general election, in such manner and form as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting at such election, the same shall become a part of this Constitution.

SEC. 2. If at any time hereafter two-thirds of the House and Council shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors of the next session the assembling of a Convention, and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at the next session, provide by law for calling a Convention, to be holden within six months after the passage of such law, and such Convention shall consist of a number of members not less than that of both branches of the Legislature.

ARTICLE XVIII.

SCHEDULE.

SECTION 1. That no inconvenience may arise by reason of a change from a Territorial to a permanent State Government, it is declared that all rights, actions, prosecutions, claims and contracts, as well of individuals as of bodies corporate, including contracts, leases, and other obligations of all descriptions, shall continue as if no change had taken place in the Government of the Territory, and all process which may be issued by the authority of the Territory previous to the admission into the Union as a State of the United States, shall be valid as if issued in the name of the State.

SEC. 2. All laws of the Territory of Nevada, in force at the time of the admission of this State into the Union, not inconsistent with this Constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the Legislature.

SEC. 3. All fines, penalties, or forfeitures accruing to the Territory of Nevada, or to the people of the Territory, shall accrue to the State of Nevada, for the use of the people of said State.

SEC. 4. All recognizances heretofore taken, or which may be taken before the day appointed for the organization of the Courts, shall continue and remain as obligations to the people or State of Nevada, according to the nature and conditions thereof; and all bonds given by officers to the Territory of Nevada, or to any county or other political subdivision thereof, shall remain binding upon the parties and their sureties, and may be prosecuted for the use of the people of the State of Nevada, or of the county or other political subdivision of the Territory of Nevada, for the use of each, as the case may be; and all bonds given to any officer or court, or in any proceeding in the Territory of Nevada, shall have their full force and effect in the State of Nevada.

SEC. 5. All indictments which may be found, or which may be pending in the Courts of the Territory of Nevada at the time of the admission of this State into the Union, may be prosecuted in the name of the people of the State of Nevada, with like effect as if found or pending in the Courts of this State; and all writs, actions, plaints, causes of action, prosecutions, claims and contracts of this State, pending in the Courts thereof, may be continued in the name of this State or the people thereof, and all such as may have been transferred to the Courts of this State from any other Court, may be proceeded in, in the Courts in which they are now pending, as if they had been originally commenced therein; and all writs issued, prosecutions commenced, or proceedings had in any of the Courts of this Territory, previous to the admission of this State into the Union, may be prosecuted to judgment, sentence, and execution, in the proper Courts of this State; and all bonds or undertakings executed or given to this State, or to any officer or person in any action, matter, or proceeding in any of the Courts of this State, shall remain in full force and effect notwithstanding the admission of this State into the Union; and all executions issued upon judgments rendered in any Court of this State within three years next before the admission of this State into the Union, may be executed by any officer of this State authorized to execute the same, in the same manner as if they had been issued from the Courts of this State; and all bonds given by any officer of the Territory of Nevada, or by any person in any proceeding in the Courts of the Territory of Nevada, shall have their full force and effect in the State of Nevada, and may be prosecuted in the name of the people of the State of Nevada, for the use of each county, or other political subdivision of the Territory of Nevada, as the case may be; and all bonds given by any person or persons to the Governor of the Territory of Nevada, or to any other officer, for the use

such county of this Territory, (where a newspaper is published,) as soon as practicable after the final adjournment of this Convention. Such President and Secretary shall forward a copy of this Constitution, certified as aforesaid, to the President of the United States, President of the Senate, Speaker of the House of Representatives, and the delegate in Congress from this Territory.

Sec. 13. All debts and liabilities of the Territory of Nevada, legally incurred, and which remain unpaid at the time of the admission of this State into the Union, shall be assumed by and become the debts of the State of Nevada; provided, that an amount not exceeding the sum of twenty thousand dollars shall be assumed for such debts or liabilities contracted or incurred on and after the first day of January, A. D. 1864.

Sec. 14. The Senators to be elected at the first election under this Constitution, shall draw lots, so that the term of one half thereof shall expire on the day succeeding the general election in A. D. 1864; and the term of the other half shall expire on the day succeeding the general election in A. D. 1866; provided, that in drawing lots for all Senatorial terms, the Senatorial representation shall be allotted so that the counties having two or more Senators, the terms thereof shall be divided as equally as may be between the long and short terms.

Sec. 15. At the general election in A. D. 1864, and thereafter, the term of Senators shall be for four years from the day succeeding such general election, and members of Assembly for two years from the day succeeding such general election, and the terms of Senators shall be elected in long and short terms, as hereinbefore provided; so that one-half thereof, as nearly as may be, shall be elected every two years.

Sec. 16. The term of members of the Assembly elected at the first election under this Constitution, shall expire on the day succeeding the general election in A. D. 1864.

Sec. 17. The first regular Session of the Legislature under this Constitution, shall be held at such time after the admission of this State into the Union as the Executive of the State shall by his proclamation direct; provided, such time shall not be less than twenty nor more than sixty days after such admission.

Sec. 17. The second regular session of the Legislature shall convene on the first Monday of January, A. D. 1865, and such regular sessions shall thereafter be held on the first Monday of January, biennially.

Sec. 18. All county officers, (except Probate Judges), and all township, city and town officers, under the laws of the Territory of Nevada at the time when this Constitution shall take effect, and whose offices are not inconsistent with the provisions of this Constitution, shall continue in office until their successors shall be elected and qualified. The time of such election and qualification shall be as prescribed by law; provided, that the time of such election shall not be postponed beyond the general election in A. D. 1864, and the time of the qualification of such officers shall not exceed thirty days after such election.

Sec. 19. At the first regular session of the Legislature to convene under the requirements of this Constitution, provision shall be made by law for the payment of the publication of six hundred copies of the proceedings of this Convention, in book form, to be disposed of as the Legislature may direct; and the Hon. J. W. North, President, and A. J. Marsh, one of the reporters, of this Convention, shall contract for and supervise the publication of such proceedings. Provisions shall be made by law at such first session of the Legislature for the compensation of the official reporters of this Convention for their services respectively; and they shall be paid in coin or its equivalent. The rates of compensation shall be as follows: to the official reporters jointly, forty cents per folio for reporting the same for publication, and to A. J. Marsh for supervising such publication, the sum of fifteen dollars per day during the time actually engaged in such service.

Sec. 20. After the admission of this State into the Union, and until the Legislature shall otherwise provide, the several district and county judges shall hold Courts in their respective districts and counties at such times and places as they may respectively appoint; and until provision shall be made by law for holding the terms of the Supreme Court, the Governor shall fix the time and place of holding such Court.

Done in Convention, at Carson city, the eleventh day of December, in the year of our Lord one thousand eight hundred and sixty-three, and of the Independence of the United States the eighty-eighth, and signed by the delegates.

Mr. KINKEAD moved that the Convention adjourn to meet at ten o'clock, to-morrow morning.

Mr. CHAPIN. Oh, no! Let us work an hour longer; let us fix the name of the State, at least.

The question was taken on the motion to adjourn, and upon a division, it was not agreed to—ayes 13—noes 17.

COMMITTEE OF THE WHOLE.

Mr. CHAPIN. I now move that the Convention go into Committee of the Whole, and take up the subject before us—the Constitution.

The question was taken, and the motion was agreed to.

Accordingly the Convention resolved itself into Committee of the Whole, (Mr. Chapin in the Chair), and proceeded to the consideration of the preamble.

PREAMBLE—NAME OF THE STATE.

Mr. TOZER. I move the adoption of the preamble.

The CHAIRMAN. I suppose the question should first be on adopting the name of the State.

Mr. TOZER. That is contained in the preamble.

The SECRETARY read the preamble, as follows:—

PREAMBLE.

We, the people of the State of Nevada, grateful to Almighty God for our freedom, in order to secure its blessings, insure domestic tranquility, and form a more perfect Government, do establish this Constitution.

Mr. DUNNE. I move to amend by striking out the word "Nevada" and inserting the word "Washoe."

Mr. BALL. I suggest that this is out of order, for the reason that the Enabling Act fixes the name as the State of Nevada.

Mr. BANKS. I do not read it so.

Mr. FITCH. The title of the act is, "An act to enable the people of Nevada to form a State Government," etc. Now what Nevada? It must be Nevada Territory; the people of Nevada Territory are to form a State government.

Mr. COLLINS. Read the second section.

Mr. FITCH. Very well—

"Sec. 2. And be it further enacted, That the said State of Nevada shall consist of all the Territory included within the following boundaries"—

I do not consider that binding upon us.

Mr. COLLINS. I am inclined to think that Congress had really no definite idea or preference in regard to a name, but that, rather out of

deference to the Convention of last year, which had agreed upon the name of Nevada, that body gave it that name, calling it Nevada in the Act. I do not think, however, that that would prevent the President from proclaiming us as a State, if we should take any other State name. I do not imagine that there would be any serious objection, that is, in Congress, and the name of Nevada is certainly a misnomer, for, if it conveys any meaning at all, it is a great falsehood. I would be glad if we could select some other name. The State of Washoe would sound well, and everybody knows us by the name of Washoe, while, if we are christened Nevada, we are liable to be confounded with the city of Nevada, Nevada County, and the Nevada Mountains. Quite recently we sent some very handsome silver bricks to the East in aid of the Sanitary Fund, and I notice that the county of Nevada, in California, was given the credit for sending those bricks to St. Louis. I say, independent of its being a falsehood, it is too common. Those who understand the meaning of the word are aware that it is wholly inapplicable to us. When you hear it, you are inclined to button your coat, and shiver. Here we have an almost semi-tropical climate, and to call it Nevada is an outrage upon the people and the climate of almost the whole of the Territory. Almost any other name would be better than Nevada, and Washoe seems to be the most appropriate word. We are known everywhere, north and south, east and west, as Washoe, and why should we give people the impression that this is a species of north-pole climate? Why should we convey the groundless idea, that to make an expedition here a man is required to fit himself out with furs and moccasins, and everything else of that kind, to prevent his freezing? Therefore I hope, if it be possible, unless the Enabling Act is deemed to be absolutely binding upon us, that we shall christen the State by some other name.

Mr. JOHNSON (the President). Whilst I concur in the views presented by my friend from Storey, (Mr. Collins) in favor of adopting some other name for our State, yet at the same time I must say I think we are precluded from so doing by the language contained in the Enabling Act. We should not seek for information regarding the sense of the act, upon that subject, from the preamble, or from its title, but we shall find it in the body of the act itself. Section 2, which has already been referred to, provides that the said State of Nevada shall consist of certain specified Territory—"the said State of Nevada." Then reading further, we find that Section 6 is as follows:—

"Sec. 6. And be it further enacted, That until the next general census shall be taken, said State of Nevada shall be entitled to one Representative in the House of Representatives of the United States, which Representative," etc.

Then in Section 8 we have this language:—

"Sec. 8. And be it further enacted, That provided the State of Nevada shall be admitted into the Union, in accordance with the foregoing provisions of this act, that twenty entire sections of unappropriated public lands within said State, to be selected and located by direction of the Legislature thereof, on or before the first day of January, Anno Domini 1866, shall be, and they are hereby granted, in legal subdivisions of not less than 160 acres, to said State, for the purpose of erecting public buildings at the Capital of said State, for legislative and judicial purposes, in such manner as the Legislature shall prescribe."

Again, in Section 11, there is this language:

"Sec. 11. And be it further enacted, That from and after the admission of the said State of Nevada into the Union, in pursuance of this act, the laws of the United States not locally inapplicable, shall have the same force and effect within the said State as elsewhere within the United States, and said State shall constitute one judicial district, and be called the District of Nevada."

The terms of admission into the Union are predicated from the beginning upon the name, "State of Nevada." I think, from an examination of this act, we are clearly restricted to that name, and without that name there would be grave doubts whether there would be any authority by which we could obtain these public lands, and possibly there might even be some doubt as to our right to send a Representative to the Congress of the United States, without further Congressional action. To my mind it is quite obvious that we are precluded, by the action of Congress, from taking any other name.

Mr. STURTEVANT. I was not aware but that every State, if it be a State at all, has a right to be represented in Congress, and I think in that respect it would make no difference what we called our State. I think we can name it any thing we please, and still we should be entitled to everything that other States are entitled to, because we come into the Union on an equality. Now, every State which is admitted is entitled to certain grants of lands, and certain rights and privileges, and if we do not have the same as other States have, we do not want to be admitted. This same question was up in the Convention of last year. Then the Legislature had passed an Enabling Act, authorizing the Convention to form a Constitution and State Government for the "State of Washoe," but the Convention saw fit then to alter the name to Nevada. I think we have as much right to alter the name in this Convention, and it would be much better to call the new State Washoe than to make it a mere namesake of every stable and every pisayune liquor shop in the Territory. I hope we shall adopt the name of Washoe.

Mr. JOHNSON. Every State admitted into the Union is entitled to such rights, in the matter of representation in the lower branch of Congress, and grants of public lands, and like matters, as may be given to it by the act under which it is admitted, whether that act be an enabling act, authorizing the formation of a State Government and its admission by subsequent proclamation, or an act of Congress authorizing such admission when the State has

been previously organized. There is an existing act of Congress establishing the ratio of representation, and under that act, as every member knows, our population is so meagre as to constitute but a small fraction of that which would entitle us to a Representative. But the rights we have as a State, in this particular, are such as Congress in its wisdom has granted to us. Congress has provided that a State called the State of "Nevada" shall be admitted after certain proceedings have been had, and the President is authorized to declare by proclamation the admission of the State of "Nevada" into the Union; and I conceive that no other name would comply with the terms under which we are to be admitted. It is true that the late Constitutional Convention did override the act of the Legislature by substituting the name of "Nevada" for "Washoe;" but that cannot be regarded as a precedent, because the Convention was held entirely without authority having previously been given by Congress. The entire action of that Convention depended upon the subsequent approval of Congress, for it rested with Congress to say whether we should be admitted under that Constitution or not, and we could just as well have been admitted by one name as by another. The people, however, refused to ratify the action of the Convention, and consequently Congress took no action upon it, but provided for the assembling of a Convention, by the passage of our Enabling Act. In that Enabling Act, as I conceive, Congress has specifically prescribed our name. By that name alone we acquire, not only the right of representation, but all the other rights referred to in that act. I think there are some objections to that name; but, if so, those objections should have been made known to Congress before the passage of this Enabling Act. Now the child is named; it has been baptized by the name of Nevada, and nothing short of an act of Congress can change that name.

Mr. TOZER. I shall leave the discussion of the point as to whether or not we are concluded by the Enabling Act in regard to the name, to others. But I have been heretofore, and am now in favor of the name of "Nevada," for this country. I think it is a beautiful and euphonious name. My colleague, (Mr. Collins,) says it is unpleasant and meaningless to him, and the gentleman from Washoe, (Mr. Sturtevant,) urges that it is liable to be confounded with towns, cities, and mountains. It does not seem to me that there is more liability of confusion on that score, than there would be with almost any other name that can be suggested. We are already well known as the Territory of Nevada, and a great part of our Territory lies throughout its course at the base of the Sierra Nevada Mountains. I think it proper to call the State "Nevada," on that account alone. My colleague is in favor of the name of "Washoe," on the ground of euphony. I take issue with him there. In my opinion, it is a miserable, guttural, meaningless word, especially when it is pronounced by that half-clad, abject tribe of Indians who go by the name of "The Washoe." It is certainly a very harsh sounding word; and its meaning I have never yet been able to learn, either from the aborigines themselves, or from those who are acquainted with their language. For these reasons, if not for more potent ones, I am in favor of retaining the name of "Nevada."

Mr. BALL. There is another reason why the name of Nevada should be retained. In the last Convention, a motion was made to call the State Esmeralda, another to call it Humboldt, a third Washoe, and a fourth Nevada; and the latter was finally adopted. The discussion on that subject induced me to make inquiries of various gentlemen who came to this Territory for two or three months thereafter, either on pleasure or on business, and whose homes are in the East. Without exception, those gentlemen told me that they never heard the name of Washoe applied to this country at all, until they came to California, except by some of their friends who had resided in California, and who spoke of the mines of Washoe as being very rich; and they said they were surprised when they found that by Washoe they meant Nevada Territory. They each and all assured me that the name by which we are known throughout the East is Nevada. That is one great reason, to my mind, why we should adopt that name. Then we shall still be known as Nevada at home; and when there are any reports or statements made there in reference to Nevada, everybody will understand where it is at once. I think there is no good reason why we should change our name, and certainly very few persons in this Territory, or among my constituents, at least, desire to adopt the name of Washoe.

The question was taken on the amendment to strike out "Nevada," and insert "Washoe," and the amendment was not agreed to.

The question was taken on the adoption of the Preamble, as originally read, and it was adopted.

Mr. FITCH moved that the Committee rise, report progress, and ask leave to sit again. The question was taken, and the motion was agreed to; and the Convention accordingly rose.

IN CONVENTION.

The PRESIDENT having resumed the Chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration the Preamble, Declaration of Rights, and other matters; had made some progress therein, and had instructed him to ask leave to sit again.

Mr. FITCH. The Committee of the Whole have reported the Preamble, as I understand. I move that the Preamble be adopted by the Convention.

The question was taken, and the motion was agreed to.

HOURS OF SESSION.

Mr. CROSMAN moved that the regular hour of daily meeting hereafter, be nine o'clock, A. M.

Mr. BROSNAN. I have a resolution here in regard to that subject which I will offer, if the gentleman will withdraw his motion.

Mr. CROSMAN. Certainly; I withdraw it.

The SECRETARY read Mr. Brosnan's resolution as follows:—

Resolved, That this Convention shall, until otherwise ordered, meet at nine o'clock, A. M., each day, (Sundays excepted,) and continue in session until noon, at which hour a recess shall be taken. It shall meet again at one, and hold its session until five o'clock, P. M.

The question was taken, and on a division, the resolution was adopted—ayes, 19; noes, 4.

On motion of Mr. CROSMAN, at twenty-five minutes before six o'clock, P. M., the Convention adjourned.

THIRD DAY.

CARSON, July 6, 1864.

The Convention met at ten o'clock, A. M., and was called to order by the President.

In the temporary absence of the Secretary the Official Reporter called the roll, and twenty-eight members responded to their names, the absent members being Messrs. Belden, Fitch, Haines, Jones, Mason, McClinton, Morse, Warwick, Wellington, Wetherill, and Williams.

Prayer was offered by Rev. Mr. Riley.

The journal of yesterday was read and approved.

Mr. TOZER. I had there is a newly arrived member, my friend Mr. B. S. Mason, of Esmeralda; and at a proper time I shall propose that he be sworn in.

The PRESIDENT. Our order of business is "Reports of Standing Committees," but we have as yet no Standing Committees, and all the Special Committees, I understand, made their reports yesterday.

RULES OF THE CONVENTION.

Mr. BROSNAN. I rise for information. I would like to ascertain from some gentleman from Ormsby County whether or not it is possible to obtain copies of the Rules of the last Assembly.

Mr. HAWLEY. I have inquired of the Sergeant-at-Arms, and he informs me that he is unable to find them. I have, therefore, prepared a resolution to print them.

The PRESIDENT. Motions and resolutions are in order as the regular order of business.

Mr. HAWLEY. Then I will send up my resolution. The Sergeant-at-Arms now informs me, however, that he thinks there is a desk in the County Clerk's office, in which there are a number of copies, and as soon as he can get into that office he will try to find them.

The PRESIDENT. If the gentleman desires, the resolution can be read and then withdrawn or laid over.

The SECRETARY read:—

Resolved, That this Convention order to be printed one hundred copies of the Rules and Order of Business of the Territorial Legislative Assembly, adopted by this Convention July 6, 1864.

Mr. HAWLEY withdrew the resolution temporarily.

LIMITATION OF SPEECHES.

Mr. BELDEN offered the following, which was read:

WHEREAS, The people of the Territory of Nevada expect, and it is due to them, that the term of this Convention be made as short as possible; and whereas, considering the grounds upon which the Convention was based its proceedings for framing a Constitution for the coming State of Nevada, it is believed that the work can soon be accomplished; therefore be it

Resolved, That each member of this Convention shall be allowed fifteen minutes, and no more, for his own expressions upon any one subject matter that may come before this Convention during its term.

Mr. STURTEVANT. I second the resolution.

The PRESIDENT. Before I put the question on this resolution I desire to call attention to one of the rules which we have already adopted, because there may be some conflict between the resolution proposed and that rule. I refer to rule XII, which reads as follows:—

13. No member shall speak more than twice to the same general question, without leave of the House, until every member desiring to speak on the question pending shall have spoken.

That there may be no confusion in our rules, I simply suggest that the resolution be so framed as not to conflict with one of the established rules of the Convention. There may be some question arising hereafter as to the construction to be given to this resolution.

Mr. BELDEN. I believe the Convention owes it to itself to adopt this resolution as it is offered.

Mr. DUNNE. Do not the rules require that a notice of one day shall be given before changing one of the standing rules of the Convention?

The PRESIDENT. I have not a copy of the rules, but the Secretary informs me that there is such a standing rule.

Mr. DUNNE. I supposed there was, and I would suggest to the gentleman that he give notice that to-morrow he will move to amend that standing rule; I think the rule should be amended in that respect, and if the gentleman does not do so, I will give that notice myself.

Mr. BROSNAN. We might suspend that rule, and let the resolution be acted upon now.

The PRESIDENT. The rules which we have adopted provide that no standing rule or order of the House shall be changed, except upon a motion of which at least one day's notice shall have been given, stating the specific object of such change; and the amendment to be made must be distinctly specified. These rules, it occurs to me, do not all apply very well to this

body. There seems to me to be a very wide difference between a Convention and a Legislature; and the rules which would properly be applicable to a Legislature would not always apply to a Convention.

Mr. DUNNE. I imagine not; but it seems to me, however they may be construed, that if two thirds of any parliamentary body wish to amend a rule, they may do so. And for the purpose of seeing whether or not this amendment can be made now, I move that that portion of the standing rule of the Convention which relates to the time that may be occupied by a speaker, whether it be embraced in one or two of the rules, be suspended, for the purpose of making an amendment, and as it requires to be distinctly stated, I offer this as an amendment:—

Resolved, That no person shall be allowed to speak more than fifteen minutes on any one subject, nor more than once upon that subject, so long as any other member who wishes to express his opinions has not been heard.

The PRESIDENT. I suggest that the gentleman from Humboldt should reduce his motion to writing, as it is intended to become one of our standing rules.

Mr. DUNNE. I will do so, sir.

The PRESIDENT. On examination of these rules, so far as I can discover, it is not necessary that one day's notice, or that any notice, shall be given; because I find that it is provided that any rule may be altered or changed by a two-thirds vote. It will be entirely in order, therefore—I address myself to the gentleman (Mr. Belden) who first offered the resolution—to move to amend the rule as it now stands, by substituting his resolution. And then, if the gentleman from Humboldt (Mr. Dunne) desires, he can offer an amendment in order.

Mr. BELDEN. I make that motion.

The PRESIDENT. The Secretary will read the amendment proposed to Rule XII.

The SECRETARY read:—

Each member of this Convention shall be allowed fifteen minutes, and no more, for his own expressions upon any one subject matter that may come before this Convention during its term.

MEMBER SWORN.

Mr. TOZER reminded the President that Mr. Mason, of Esmeralda, was present, and suggested that he be sworn in.

Mr. R. S. MASON, of Esmeralda, came forward, and after taking the oath of office, administered by Judge Wright, and subscribing to the same, took his seat as a member of the Convention.

THE RULES—AGAIN.

Mr. DUNNE. I now desire to offer my amendment to the standing rule; to add these words: "And in no case shall any member be allowed to occupy more than fifteen minutes at any one time." So that the rule as amended will read:

No member shall speak more than twice to the same general question without leave of the house, until every member desiring to speak on the question pending shall have spoken, and in no case shall any member be allowed to occupy more than fifteen minutes at any one time.

Mr. HAWLEY. I would suggest that that rule would be likely to become rather obsolete, and I will ask the gentleman's permission to add the words, "unless by leave of the House."

Mr. DUNNE. The Convention seems to have varied somewhat from the opinion which prevailed yesterday against protracted discussion. I stated yesterday that I did not wish to set a bad example, therefore I limited myself to five minutes. I do not wish to see any such bad example set; but, at the same time, I do not wish to limit every man to five minutes, and therefore I say that no one shall speak more than fifteen minutes. It seems to me that that is long enough.

Mr. NOURSE. It seems to me that there might happen occasions where justice would require a prolongation of that time.

Mr. DUNNE. Then it can be done by a two-thirds vote suspending the rule.

Mr. NOURSE. I would like to have inserted, "unless the House grants leave."

Mr. DUNNE. Do you mean by that, unanimous leave?

Mr. NOURSE. Certainly.

Mr. DUNNE. Very well; I will accept that.

The PRESIDENT. The Chair will state the position of the question: If the amendment be adopted, as proposed by the gentleman from Humboldt, the rule will be, that a member may speak twice with the leave of the House, but not more than fifteen minutes in the aggregate, unless by leave of the House—unless the rule be suspended for that purpose.

Mr. TOZER. It is poor economy of time, it strikes me, to spend the whole day in fixing this rule, when we might be progressing with the work before us. I hope we shall come to some determination.

Mr. NOURSE. I understand the gentleman from Humboldt to accept my amendment to add the words, "unless by leave of the House."

Mr. DUNNE. The gentleman made that proposition, and I asked him if he meant it to be "unanimous leave of the House." He assented to that, and I accepted it in that language.

Mr. TOZER. I move to lay the whole subject matter of the amendment of this rule on the table.

The question was taken by a division, and the motion to lay on the table was not agreed to—ayes, 11; noes, 10.

Mr. DeLONG. As I prefer the original to the substitute, I move to lay the substitute on the table.

The question was taken by a division, and the motion to lay on the table was not agreed to—ayes, 13; noes, 14.

Mr. NOURSE called for the reading of the substitute as modified.

The SECRETARY read:—

No member shall speak more than twice to the same general question without leave of the Convention, until every member desiring to speak on the question

speaking shall have spoken, and in no case shall any member be allowed to occupy more than fifteen minutes at any one time, except by unanimous consent of the Convention.

The question was taken on the adoption of the substitute, and it was adopted.

The PRESIDENT. The position of the question now is, that the substitute having been adopted for the amendment to the rule proposed by the gentleman from Washoe, (Mr. Belden,) the question recurs upon the adoption of that amendment to the rule, as amended, and upon that a two-thirds vote is required.

Mr. DuLONG. Can the standing rules be amended without a preliminary notice?

The PRESIDENT. That inquiry was made a little while ago, and I could not find any standing rule requiring a preliminary notice.

Mr. DUNNE. I would ask that the Secretary read, for information, the rule in regard to amendment of the rules.

The PRESIDENT. The question is on the adoption of the substitute for Rule XII.

Mr. CROSMAN. I understand it is not a substitute, but an addition to that rule.

The PRESIDENT. The gentleman is correct.

Mr. DuLONG. I call for a division on adopting the amendment.

The question was taken by a division, and the vote stood—ayes, 19; noes, 9.

Mr. DuLONG. I understand that the amendment is lost, because the affirmative side has not a two-thirds vote of all the members elected.

Mr. STURTEVANT. It seems to me that that would be rather a singular precedent to establish. Suppose there were not two-thirds of the members elected here?

The PRESIDENT. The gentleman from Storey is correct; the amendment is lost.

Mr. FITCH. It occurs to me, Mr. President, that we made a mistake yesterday, and one that we might just as well correct this morning. When the committee reported back the Preamble, I moved its adoption, and it is recorded as adopted, on the minutes. Now I have not read the rules, but I would suggest that the Preamble will require to receive three several readings; and I further suggest that we take it up and read it now.

Mr. DuLONG. What is the regular order of business?

The PRESIDENT. Motions and resolutions.

Mr. HAWLEY. I learn from the Sergeant-at-Arms that he has been unable to find copies of the rules we have adopted, and they are entirely lost. I therefore renew my resolution—that the Secretary be required to furnish a copy of the rules to the printer, to be printed for the use of the members; but I do not know as he will print them without some promise of compensation.

The SECRETARY read the resolution, as follows:—

Resolved, That this Convention order to be printed 200 copies of the rules and order of business of the Territorial Legislative Assembly, adopted by this Convention July 6, 1864.

Mr. FITCH. If any gentleman here thinks the printer will do it and take the rough chances of pay, I think we had better let him.

Mr. DuLONG. I suggest that we call upon the gentleman from Ormsby, (Mr. Crawford,) for information.

Mr. STURTEVANT. I wish to give notice of a motion to amend that two-thirds arrangement, [laughter,] so that we shall be able to do business. We might perhaps be caught without any two-thirds of the members elected here, and then we should find ourselves in a tight place, not being able to do anything at all. I think that any gentleman who was a member of the last Legislature will understand pretty well what I mean. We were "tight up" there pretty nearly all the time, from the beginning to the end.

The PRESIDENT. The gentleman's notice will be entered upon the minutes.

Mr. CHAPIN. I hope that this resolution to print will not be adopted, and for this reason: Those rules were prepared for another and different body entirely, and they are not at all appropriate to the government of the proceedings of this body. It would be a great expense to print them; it would occasion considerable delay; and they would be of no account whatever after they were printed. Now, I wish to avoid that expense and inconvenience, and I propose, as a substitute for that resolution, that we do as we did at the last Convention—adopt the rules prescribed in Jefferson's Manual, and let us be governed by them wholly, without going any further. I now make that motion.

Mr. BANKS. I apprehend that every practical difficulty will be avoided by common consent in regard to that motion. The reason why those rules were adopted by the Convention was the statement which has been repeated here, that we could probably find a hundred copies of them already printed. But for that supposition, the committee probably would have reported in favor of a proposition similar to that now made by the gentleman from Storey, (Mr. Chapin.) I hope, under the circumstances, that the motion will prevail, and that we shall adopt Jefferson's Manual as the embodiment of the rules for the government of this body. The rules laid down in Jefferson's Manual have become the common law in parliamentary matters. They are understood by all those who are accustomed to the deliberations of bodies of this character. And, then, with a few books, we can get along much better here than we could with a few copies of these rules. I hope the motion will prevail, and a number of copies of Jefferson's Manual can then be procured and passed around among the members, and we can get along much more economically than by any other course.

The PRESIDENT.—The Chair would suggest that the gentleman from Storey, (Mr. Chapin,) reduce his motion to writing.

Mr. HAWLEY. I merely introduced this resolution to get the matter before the Convention. I presumed myself that there would be difficulty in obtaining the printing, and I think there will be no opposition to the amendment of the gentleman from Storey. I will therefore, with the leave of the Convention, withdraw my resolution.

Mr. CHAPIN. I will offer the following:

Resolved, That the rules prescribed in Jefferson's Manual be adopted for the government of this Convention.

Mr. NOURSE. I second the resolution, for the purpose of making a remark upon it. I suppose, as it stands now, the rules of the last House are the rules of this body, and they cannot be suspended, except by a two-thirds vote. Now, I find, by reference to those rules, that a motion to reconsider is in order, and I would inquire whether, if this resolution be withdrawn, and a motion to reconsider passed, it will not leave us where we were before adopting those rules. If so, then we could adopt Jefferson's Manual instead.

Mr. CHAPIN. I will withdraw the resolution for that purpose.

Mr. NOURSE. Then I move that the vote by which the Convention adopted the rules of the last Legislature be reconsidered, they having been adopted simply because it was believed that we had a large number of printed copies, and it now appearing that that was a mistake. I see no reason for adopting them whatever, as this is a different body altogether from a Legislature, and as the only reason given for adopting them has been found not to exist.

Mr. DeLONG. As a question of order, I will state that a motion to reconsider can only be made on notice given.

Mr. NOURSE. No, sir; the rule says, simply, that a motion to reconsider shall not be made, except upon the same day, or the following day, and I will add, for the information of the gentleman, that I voted in the majority.

The question was taken, and the motion to reconsider was agreed to.

Mr. CHAPIN. I now offer my resolution.

The PRESIDENT. The vote having been reconsidered, the question now before the Convention is upon the adoption or rejection of the report of the Committee recommending these rules. That is open to amendment, and I understand the gentleman from Storey (Mr. Chapin) now offers this as an amendment to the report of the Committee.

The SECRETARY. The report is—first, the order of business; second, recommending the adoption of the rules, so far as applicable; and third, recommending the adoption of Jefferson's Manual in matters to which the rules of of said Legislature may not apply.

The PRESIDENT. The amendment, then, applies only to that portion which relates to the rules.

The question was taken on the adoption of Mr. Chapin's amendment, and it was adopted.

The question recurred upon the adoption of the report of the Committee on Rules and Order of Business as amended, and it was adopted.

PRINTING.

Mr. PROCTOR offered the following resolution, which was read and adopted:—

Resolved, That a committee of three be appointed to make arrangements for the necessary printing for this Convention.

The PRESIDENT appointed as such Committee, Messrs. Proctor, Fitch, and Crawford.

LIMITATION OF SPEECHES—AGAIN.

Mr. DUNNE. Now, Mr. President, while I cannot but admire the parliamentary tact of those gentlemen who are opposed to limiting the time of speaking, yet I cannot but notice their practical ingratitude, manifested by so soon rejecting the very means by which they carried their point. But, as the two-thirds rule is now out of the question, I offer this resolution, which I send up to the desk.

Mr. DeLONG. I would ask if, under the Manual, it is in order to offer the same resolution twice on the same day, after a final vote upon it?

The PRESIDENT. The Chair is in doubt about it; the Convention changes its rules so often.

Mr. DeLONG. I submit, that after the action of the Convention, adopting Jefferson's Manual, a proposition submitted and voted upon on one day cannot on that day be again brought before the House.

Mr. DUNNE. Even admitting that to be the case, which I do not doubt, still it was not an original resolution which was formerly voted upon, but only an amendment.

The PRESIDENT. The Chair conceives that the resolution offered by the gentleman from Humboldt embraces substantially the same subject matter as that which has already been voted upon. The Chair is therefore constrained to rule the point of order well taken.

THE PREAMBLE.

The PRESIDENT announced, as the order of business, the second reading and reference of bills.

Mr. FITCH. Now, I move that the Preamble to the Constitution, the adoption of which was carried yesterday, be taken up and read a second time. We committed an error, yesterday, in adopting it as a finality, and I want to get out of it as easily as possible. If we pass it to its second reading, I think it might be well to defer the third reading until the entire Article—the Declaration of Rights—be also considered and adopted. Then we can give them their third reading all together, and pass them as one bill.

Mr. DeLONG. I think we made a mistake, yesterday, by adopting this Preamble, when it should have been only read a second time, and referred to the Committee of the Whole, to be

there considered, and reported back again for the action of the Convention. It strikes me, that the only question now is, on the third reading and passage of the Preamble as reported back from the Committee of the Whole, and then we can order it to an engrossment.

Mr. BANER. We have been guilty of an error in this matter; and now we wish to remedy it, so as to give the Preamble its three readings, and pass upon it three times, in regular course of business. The first reading is always for information, according to the rules, and no motion is then in order except "shall the bill or resolution be rejected?" We should have read it yesterday, for information, but we indulged in the informality of referring it at once. Now we have read it once, and acted upon it in Committee, but we have not read it a second time. The proposition now is, to take it up, and read it a second time; and if we do that, we have complied with all the requirements of parliamentary law. It is not necessary that we should be guilty of any informality to-day because we were yesterday, and I hope we shall not discuss our errors of yesterday, to the detriment of our progress.

Mr. STURTEVANT. This motion looks to me like splitting hairs. If we desire to read the Preamble three times, we can do so; but it makes no difference whether we do or not, because it all has to go before the people of the country, and we can make nothing out of it, except by the vote of the people.

Mr. DeLONG. Under our own rules, we shall have to refer it to the Committee of the Whole again, and I really think we may as well pass it now.

Mr. FITCH. I think we might do anything, rather than prolong this discussion. I am willing to read it three times now, or do anything else.

Mr. CHAPIN. Let us act upon it, and go to work.

The PRESIDENT. I think the gentleman from Storey is correct — that we will have to go over the same ground, if we take this up again; and the difficulty arises, possibly, from the exercise of undue haste in attempting to get through our business in a few days. I think if we adopt rules, we should try to conform to them, and if we want our rules simplified, we should devise such rules as will be calculated to meet our purposes. It is naturally supposed that the requisite time will be taken to comply with all the rules. The proposition now will be, as the Chair understands it, to place the Preamble upon its third reading.

Mr. FITCH. Is it desired to read the Preamble and Declaration of Rights all together?

Mr. DeLONG. I understand it comes up as the report of a committee, and the question should be on adopting the report.

Mr. FITCH. I move that the Preamble be placed on its third reading.

The PRESIDENT. Does the gentleman from Storey, (Mr. DeLong,) raise any point of order?

Mr. DeLONG. No sir.

The PRESIDENT. The question will be on the third reading of the Preamble. The Secretary will read it.

The SECRETARY read as follows:—

PREAMBLE.

We, the people of the State of Nevada, grateful to Almighty God for our freedom, in order to secure its blessings, insure domestic tranquility, and form a more perfect Government, do ordain and establish this Constitution.

Mr. NOURSE. It strikes me, Mr. President, that that should be the last thing we do. We do not want to establish this Constitution until we know what Constitution we have adopted, and are going to establish.

Mr. STURTEVANT. It appears to me it would be better to finish the thing up as we go along. Then the last day's work we do on we have it all done, and done with it. If we go on and do not have the engrossing done till we have the whole finished, we shall have to adjourn over several days, and then meet for the purpose of adopting the whole Constitution. But if we finish the work as we go along by sections, then the moment we get through with the last of them, our work is all completed, and we can adopt it as a whole, and go home about our business.

The question was taken on ordering the Preamble to a third reading, and it was agreed to.

MODE OF PROCEEDING.

Mr. BANER. In order to get information, so as to understand just what we are about, and where we are, I wish to ask the Chair a few questions as to what is the understanding of the Convention, and what the decision of the Chair will be, in reference to our mode of procedure. It occurs to me that it would not be improper to regard the adoption of this basis as the first reading of a bill, and to consider ourselves as a deliberative body about to proceed to the second reading of a bill. If we pursue that course, I think our way is plain. We can refer the instrument, or any parts of it, to the Committee of the Whole, and then, when they report it back, we have the question, shall the report be adopted? and if adopted, then comes, in the ordinary legislative course, the third reading of the bill.

The PRESIDENT. The Chair is not prepared to say that passing a resolution making this Constitution the basis of our action is equivalent to giving the whole instrument its first reading. The Chair considers that we have adopted it as our basis, but not that the whole instrument has received its first reading. It is competent for the Convention to take action now, or at any time, to give the Constitution its first reading, or consider it read a first time.

Mr. BANER. It strikes me that that ruling is eminently proper; but as a matter of convenience, and I think it will meet the wishes of the Convention, I suggest that it would be proper to consider the whole Constitution as having been read a first time. I move, there-

law, that this entire document be read a first time by title—the Constitution of the State of Nevada, as we have it here printed.

The question was taken, and the motion was agreed to.

The SECRETARY read the title—"Constitution of the State of Nevada."

Mr. BANKS. Now there is another point upon which I desire information myself. I wish to know whether we are to proceed with this matter as a whole bill divided into sections, or to regard each section or article as one bill.

The PRESIDENT. As the whole matter has been read once, the entire Constitution is to be before the Convention for its action, except the Preamble, which has already been adopted, and passed to a third reading; and the Chair will, upon each successive occasion when going into Committee of the Whole upon any particular part of the Constitution, hold that only so much of it as is referred to the Committee, from time to time, is under consideration. The Chair may not be correct in this view, considering that we have already passed the whole instrument to the first reading; but perhaps it will relieve the matter of some difficulty if we understand that each article is to be considered separately and distinctly.

Mr. BANKS. With the explanation of the Chair, and with the decision, as I understand it, I am content.

Mr. DeLONG. I think a little time wasted in considering this matter will be a saving of time in the end.

The PRESIDENT. The Chair will be happy to hear any suggestions from the gentleman's consideration.

DECLARATION OF RIGHTS.

Mr. DeLONG. This Constitution is divided into articles, and it is impossible that in any one day, or one half of a day—any one sitting—we should dispose of it in Committee. And we have, in addition, to report it back. Now why not treat it as if composed of separate bills? For instance, to-day we call up the first article, and refer it to the Committee of the Whole; then the Convention goes into Committee of the Whole to consider the first article. If they get through with it, or if they wish for further time, they report back to the Convention accordingly, and then they go into Committee of the Whole on the second article, in the same way, and we progress with our work in an orderly manner. For instance, if we agree in the Convention on the first article, as reported from the Committee of the Whole, and pass it through its several stages, there is no further amendment, but it is like a bill that has passed and become a law. We have now read that article for the first time to-day. The first reading is for information, but you can read it a second time on the same day, and refer it to the Committee of the Whole; but it is required to be read the third time on the next, or some subsequent day. Now, I move to suspend the rules so as to read the first article of the Constitution by title, the second time, and refer it to the Committee of the Whole, to-day.

The question was taken, and the motion was agreed to.

The SECRETARY read Article I, entitled Declaration of Rights, by title, and it was referred to the Committee of the Whole.

MINOR QUALIFIED.

J. H. WARWICK, of Lander County, having arrived, took and subscribed the oath of office, administered by Judge Wright, and took his seat as a member of the Convention.

DECLARATION OF RIGHTS, AGAIN.

Mr. DeLONG. I now move that the Convention consider itself in Committee of the Whole—the President remaining in the Chair—for the consideration of Article I, entitled, Declaration of Rights.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (the President remaining in the Chair,) for the consideration of Article I of the Constitution, entitled Declaration of Rights.

The SECRETARY read Section 1, as follows:—

Section 1. All men are by nature free and equal, and have certain inherent rights, among which are those of enjoying and defending the lives and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

No amendment being offered to this section, it was agreed to.

PARAMOUNT ALLEGIANCE.

Section 2 was read, as follows:—

Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. But the paramount allegiance of every citizen is due to the Federal Government, and no law or ordinance in the people of this or any other State of the Federal Union to dissolve their connection therewith, or perform any act tending to impair, subvert or resist the supreme authority of the Government of the United States. The Constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whensoever any portion of the States, or people thereof, attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by virtue of the Constitution, employ armed force in compelling obedience to its authority.

Mr. BANKS. I propose the following amendment: after the words "Federal Government," where they first occur, insert the words, "in the exercise of all its Constitutional powers."

Mr. FITCH. I offer an amendment to the amendment, to add after the amendment proposed by the gentleman from Humboldt, the words, "as the same have been or may be defined by the Federal Judiciary." Also, to strike out the last clause of the section commencing

"The Constitution of the United States confers full power," &c.

Mr. BANKS. I understand, from a cursory examination of this amendment, that all the change proposed to be made by the gentleman, in the insertion of those words: "as interpreted by the Federal Courts;" or substantially that.

Mr. FITCH. Yes, sir.

Mr. BANKS. Presuming that that was implied in the language of my amendment, I did not insert it; but I most cheerfully accept the amendment.

Mr. NOURSE. I move to amend that amendment, by striking out all after the words, "due to the Federal Government." It seems to me that we would then say, and say well, all that need be said by us, and anything more than that would be merely a gloss upon the Federal Constitution — a construction of ours, which would not affect the interpretation of that instrument in any manner whatsoever. When we say that paramount allegiance is due to the Federal Government, of course we mean, in its Constitutional powers only. Not to the men who happen to be at the head of the Government, but to the Government itself, is our allegiance due; an allegiance paramount to that which is due to the State Government. I think it would be the worst of errors to undertake to venture further than that, and to attempt to define the respective spheres of the State and National Governments, and I therefore have offered this amendment, to strike out all that concluding portion.

Mr. BANKS. I just wish to state, very briefly, what I understand to be the philosophy of this section, as amended by the gentleman from Storey, (Mr. Fitch,) which amendment was accepted by myself. Now, the gentleman who has just addressed the Chair and myself very materially differ as to the theory upon which this Government was framed. I understand it to be, as we propose to express it by this section, simply this, — that in the first place, as we say, our paramount allegiance under the Constitution, as interpreted by the Supreme Court of the United States, is due to the Government of the United States. But, as a State, we also, in our Constitution, say, that whatever questions may be raised, we waive all claims to the following enumerated rights. However the Supreme Court may decide; however much they may be disposed to accede; we, as the State of Nevada, waive all our claims to any rights embraced in the following enumerated cases. No power, we say, exists in the people of this or any other State of the Federal Union to perform any act tending to impair, subvert, or resist the authority of the Government. Even if the Courts give that power, we disclaim it. Again, we say that the Constitution of the United States confers full power on the Government to maintain its existence; —

And whenever any portion of the States, or people thereof, attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by virtue of the Constitution, employ armed force in compelling obedience to its authority.

I understand, then, that we are just in this position: We recognize the Constitution of the United States as paramount; we yield obedience to that, as interpreted by the Supreme Court; and further, we disclaim all claim or pretension to any right or authority in the cases enumerated in the latter part of the section.

Mr. PROCTOR. I desire to offer an amendment to these various amendments: to strike out all the latter part of the section.

The CHAIRMAN (interrupting.) There is already an amendment to an amendment.

Mr. DeLONG. The amendment to the amendment was offered by my colleague, (Mr. Fitch), and it was accepted by the gentleman from Humboldt, (Mr. Banks). Being now, therefore, a part of the original amendment, an amendment to that, I think, would be in order.

Mr. NOURSE. I think the gentleman is mistaken. The amendment of the gentleman from Storey being accepted, I moved to amend the amendment by striking out all after the words "due to the Federal Government."

Mr. PROCTOR. I offer my amendment as a substitute. I move to strike out all after "may require it," at the end of the second sentence, so as to leave the section reading as follows:—

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it.

Mr. BROSNAN. I rise to a point of order. I apprehend that that is not a substitute for the amendments. It proposes to strike out those portions to which amendments are pending, and those amendments must first be acted upon.

Mr. FITCH. I trust, Mr. Chairman, that we shall not forget, while we are desirous of expressing our individual and collective patriotism, that we have, at the same time, a duty to perform requiring calmness and deliberate consideration. I trust that we shall not cease to remember, while we are expressing our patriotic sentiments and feelings, that we are at the same time called upon to protect our own local rights.

The PRESIDENT. (interrupting.) If the gentleman will yield for one moment—there was a point of order raised by the gentleman from Storey, (Mr. Brosnan.)

Mr. FITCH. I thought that had already been decided.

The PRESIDENT. The Chair will rule that the point of order is not well taken. The gentleman from Nye, (Mr. Proctor), offers his amendment as a substitute, and it can be considered as such.

Mr. FITCH. I understand that the substitute offered by the gentleman from Nye is now before the committee. Now, Mr. Chairman, I should equally oppose what I should regard as

a manifestation of that lack of patriotism that would fall, in the formation of an organic law, to express a proper allegiance and devotion to the Government of the United States, and that enthusiastic zeal which would encumber our declaration of rights with ambiguity. We should be particularly careful to avoid either extreme, and especially should we be careful when the waves of revolution are surging over all this land, that we do not through a zealous, though what I may perhaps properly designate as an over-zealous devotion to political abstractions, permit ourselves to be led into inserting in our organic law provisions or expressions which may properly be classed as ambiguous, and which, perhaps, those who come after us may find it extremely difficult to understand or explain.

Now, sir, if we are wedded to this phrase "paramount allegiance"—a phrase which I may be permitted to say is an unhappy combination of terms at the best, because allegiance is the attribute of sovereignty, and sovereignty is supreme, an integral part of itself, an ultimate atom which cannot be divided, and therefore there can be no such thing as a paramount allegiance—I say if we are wedded to this phrase, why not explain in what it consists, and what we mean by the expression? As to the rest of the language of this original section—that the "Constitution of the United States confers full power on the Federal Government," etc., and that upon any "attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by warrant of the Constitution, employ armed force," etc., I suppose no one will insist on its being placed in the section, because it follows by implication among the powers of Government. But if we insert the words, "but the paramount allegiance of every citizen is due to the Federal Government," then I am in favor of adding the words, "in the exercise of all its Constitutional powers, as the same have been or may be defined by the Federal Judiciary."

I trust that no gentleman will misunderstand my position on this question. I yield to no man in my devotion to the Federal Union, nor in my abhorrence of the doctrines of secession and nullification. And I have no hesitation in avowing my belief in the full and complete right and Constitutional power of the Government to put down any and all attempts to subvert its authority by armed force. It has that power, and I believe it ought to and will continue to exercise that power, as it is exercising it now, until the last vestige of the rebellion is driven from the land. I believe that above all the flames of war, the groans of the dying, the shrieks of the wounded in battle, and above all the turmoil and strife of this wicked rebellion, the power and dignity of the Federal Government will stand unmoved, unperverted, undestroyed. But, nevertheless, I believe that while we should express our loyalty at all proper times, and in all proper places, there is no necessity of making a useless parade of it. I do not think that by stopping here after the words "Federal Government," omitting what follows to the end of the section, and inserting instead an explanation of the paramount allegiance therein referred to, we shall either be bringing our loyalty into disrepute, or doing any injustice to those who are to come after us, and who may not, and certainly will not, with such ambiguous expressions as are here contained, be able to explain exactly what we meant in this Declaration of Rights.

I believe, Mr. Chairman, that the allegiance, and not only the allegiance, but the property, the life, and all that he has, of every citizen is due to his Government; but I believe there is no such thing as a "paramount" allegiance. If the Congress of the United States shall pass a law which is unpleasant, odious or repulsive to any portion of the people of the United States, and that law shall be declared constitutional by the Federal Judicial tribunals, I believe it is our duty to obey it, without any attempt at resistance. And if the local Legislature passes a law that is unpleasant to the people of the United States, and that local law passed by the local Legislature be declared constitutional, also, by the Federal Judicial tribunals, we owe just as much allegiance to that law as we do to any law passed by Congress. A constitutional law, enacted by Congress, declared constitutional by the Federal Judicial tribunals, and a constitutional law enacted by the Legislature of the State of Nevada, declared constitutional by the Federal Judicial tribunals, are equally binding, and equal allegiance is due to both. There can be, therefore, no such thing as a paramount allegiance, because "paramount" implies superior, and the allegiance due to one constitutional law is not superior to the allegiance due to another. The allegiance of the citizen is equally due to either, whether it be a Federal or a State law.

I should be sorry, Mr. Chairman, while I am earnestly desirous that the loyalty of the people of Nevada shall be properly expressed in her organic law, to see her come limping, and halting, and bound, into the Union. I should be sorry to see her come into the sisterhood of States hampered by an ambiguity. I should be sorry to see her enter the Union tied hand and foot, when such a thing is odious to the self-respect of the citizen, and is uncalled for by the necessities of the times, or by the requirements of the Enabling Act, which gives us the right to form a State Government, and become a State. I do not intend, and indeed I would not have the right to use the time of the Convention by opening up a discussion of the relative rights of the Federal and State Governments, and the relative allegiance due to the Federal and to the State Constitutions. We all understand that where the local laws come in conflict with the Constitution and laws of the United States, the latter over-ride and blot out the

former, and therefore no paramount allegiance, nor any other allegiance, is due to the State law in such case, because all allegiance is due to the one, and none to the other. But, at the same time, when our Constitution and laws are in accordance with, and not hostile to, the letter or spirit of the Constitution and laws of the United States, we owe just as much allegiance to the laws passed by the State Legislatures, as we do to the laws passed by Congress.

Why, Mr. Chairman, what do gentlemen want? Is not this language strong enough, and loyal enough? It says that our paramount allegiance is due to the Federal Government. Now? What does it mean? Clearly that it is due to the Federal Government in the exercise of its constitutional powers. Gentlemen surely do not mean to say that our allegiance is due to the Federal Government in the exercise of unconstitutional powers; because if we say that, we reduce all government to anarchy. We place ourselves at the absolute mercy of any despotic government which may obtain by the subversion of the hour to obtain the control of affairs. When we say "paramount allegiance," we should define what we mean, and say that the "paramount allegiance of every citizen is due to the Federal Government in the exercise of all its constitutional powers." Is there any objection to that?

Now, who is to define those Constitutional powers? I do not advocate the theory that the State Judiciary, the Legislature of the State, or the Executive, or the people of the State, should be allowed to judge of the Constitutionality of an act of Congress. If I were to say that, I should be advocating a wrong. I should be advocating, or at least giving my influence, to the theory of nullification,—a theory which I condemn and reprobate. But I say; "the paramount allegiance of every citizen is due to the Federal Government in the exercise of all its Constitutional powers, as the same have been or may be defined by the Federal Judiciary." That is the tribunal by which they are to be defined. Surely the most uncompromising loyalty, the most intense and unmitigated devotion to the Government, can ask no more than that. Will gentlemen consider this question? Why should we wish to foster the people who will come after us with an ambiguity? Why not define what we mean? The most intense patriotism cannot, certainly, object to our saying that we mean only that our allegiance is due to the Federal Government in the exercise of its constitutional powers as defined by the Federal Judicial tribunals. I trust that gentlemen will consider that it is a fundamental law that we are framing,—not a political platform, nor the resolutions of a mass meeting. I trust that we shall exhibit a decent, respectful, and proper patriotism; a patriotism that shall be in accordance with the ideas and wishes of our constituents; and at the same time, that we shall frame an organic law that may be explained and understood by those who come after us, and not engraft in it a wild, Jacobinical creed.

We enter the Union, sir,—if the people shall decree that we enter it at this time—under circumstances most peculiar. Our young State will be battle-born; but she will live and grow when the civil strife surrounding us shall have become only a memory. The organic law we are creating will be a rule of action. I trust for a great people, when the gates of eternity shall have closed upon the old age of our grand-children. Our functions are higher than those of any body legislating only for the immediate future, and our sense of responsibility should be so much greater. Let us try and be prudent, if we cannot be altogether wise. Let us not mar the symmetry of the structure we hope to erect by the language of extravagance, even if it be the extravagance of loyalty, or by the insertion of an unseemly surplusage of what those who come after us may designate as questionable, and indistinct patriotism. In a word, let us keep our political extravagances for our political platforms, and make our Constitution an enduring chart of government, rather than a string of glittering and unexplained generalities.

Mr. EARL. I desire to offer an amendment to the amendment, or substitute pending. My amendment is, to strike out the third sentence, or paramount allegiance clause, altogether; and I will ask the Secretary to read the section as it will then stand.

The SECRETARY read as follows:—

Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. The Constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whenever any portion of the States, or people thereof, attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by virtue of the Constitution, employ armed force in compelling obedience to its authority.

Mr. EARL. Now, Mr. Chairman, it seems to me that this is all we want.

Mr. DeLONG. (interrupting.) I rise to a question of order. It is a disagreeable duty, and especially so in the case of my colleague, but it must be done, because if the violation of the rule is tolerated in this instance it must be again. My point is, that an amendment to an amendment is as far as we can go in the way of amendments. We have tolerated a substitute beyond that; but we certainly cannot amend a substitute, under any rules, or under the most liberal construction of any rules.

Mr. PROCTOR said he would accept of Mr. Earl's amendment in the place of his own substitute.

Mr. DeLONG contended that still Mr. Earl's amendment was not in order, under the rules as laid down in Jefferson's Manual.

Mr. PROCTOR said he would withdraw his substitute altogether, to allow Mr. Earl's to come in.

Mr. EARL offered his amendment as a substitute.

The PRESIDENT. The question now comes up whether or not a substitute is in order, an amendment, and an amendment to an amendment being pending. The Chair has heretofore been led into error in its ruling on this point, because we have ordinarily been governed by the rules adopted by legislatures, and what of experience the Chair has had has mostly been in the California Legislature, in which, under the rules, or at least under the prevailing practice, substitutes have been recognized. But upon examination of Jefferson's Manual, which now governs us, I can nowhere find substitutes recognized at all. I think we can go no further than an amendment to an amendment, under the rules we have adopted, and the substitute is therefore not in order. The question now is on the amendment proposed by the gentleman from Washoe (Mr. Nourse) to the amendment offered by the gentleman from Humboldt (Mr. Banks). The apparent confusion has arisen from the frequent changes of the rules; we have this morning fallen back upon Jefferson's Manual as embodying our only rules, and if we understand and adhere to these, there will be no confusion or difficulty in the future.

Mr. DeLONG. The pending amendment of the gentleman from Washoe, I understand, is to strike out all after "Federal Government," where those words occur in the section. Now, Mr. Chairman, I like this language which it is proposed to strike out—

"No power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith, or perform any act tending to impair, subvert or resist the supreme authority of the Government of the United States. The Constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whenever any portion of the States, or people thereof, attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by warrant of the Constitution, employ armed force in compelling obedience to its authority."

It may be considered as surplusage, possibly, but in no other way, I think, can that language be deemed objectionable, at least by persons who are presumed to be of the proper way of thinking politically, that is, by men who disbelieve in the doctrine of the right of secession, which class includes the major portion of our community at the present time. I would like very much to see the amendment adopted which was offered by my colleague, (Mr. Fitch,) or by the gentleman from Humboldt, (Mr. Banks,) and amended by my colleague, but striking out the balance of the section might give dissatisfaction to some of our Union brethren, and really I do not know but they would have good reason for dissatisfaction.

Mr. HAWLEY. I trust, most sincerely, that the amendment offered by the gentleman from Washoe will not prevail. The gentleman from Storey, (Mr. DeLong,) stated a moment since that the only possible objection which he imagined could be urged against this latter portion of Section 2, now under consideration, was that of surplusage. I have examined it carefully, very frequently before I came to this Convention, and quite frequently since, and I am utterly at a loss, taking into consideration the present condition of our national affairs, to perceive that there is anything like surplusage, or anything like tautology in the section. There is not a word in it, in my opinion, which can possibly be objectionable to a man who stands firmly and squarely upon that platform which every man who loves his country ought to stand upon at this time.

It is generally understood and conceded that all rights and powers not delegated to the Government are reserved. Now, Mr. Chairman, we delegate, negatively, certain rights to the Federal Government. We insert in this section, if it be adopted, a declaration that the Federal Government has a right to compel the obedience of all its subordinate members, if any attempt is made to set aside any enactment of the Federal Government. And that, sir, is a doctrine to which every loyal man ought to be willing to subscribe. It is a doctrine which every true man ought to be willing to see written in letters of fire upon the firmament, that he who runs may read. There is one objection, however, which might possibly be urged to this Section 2, leaving out the amendment proposed by the gentleman from Storey, (Mr. Fitch,) but it is an objection which would probably only be raised by men who are tainted with the heresy of State Rights. And the amendment proposed by the gentleman from Storey covers that ground precisely and exactly. He who is unwilling to subscribe to the doctrine that the paramount allegiance of every citizen is due to the Federal Government in the exercise of its constitutional powers, as prescribed, and direct d, and exemplified by the decisions of the Federal courts, certainly cannot, I think, claim to represent fairly and correctly the loyal sentiments of the people of the Territory of Nevada.

And, sir, I trust, in view of the position of our national affairs—in view of the duty which rests upon this Convention to place themselves fairly and squarely upon the record, that any motion to strike out this language, so eminently proper, just, and correct, may be overruled by the Convention, and that the motion of the gentleman from Humboldt, as amended by the gentleman from Storey, may prevail by the unanimous voice of this Convention. That action will do more to give confidence to the loyal people of this Territory—more to satisfy them that their delegates are men who do not shrink from their duty—than any other course which we might pursue. By incorporating the amendments proposed into this section, we shall render our meaning clear and plain to every man who can read and properly construe the English language. And not only that, but we

shall silence every argument which could be made against this section when presented to the loyal people of Nevada—arguments which would be employed by those men who, whether openly or covertly, are acting in sympathy with that party which has plunged this country into rebellion and war, and made a Golgotha of many a beautiful valley in the East.

Mr. NOURSE. I wish to state very briefly my reasons for moving the amendment which I offered. If no amendment had been offered, I should have been content to let the section stand; but if it is to be amended at all, I would like, of course, to have it so fixed as to satisfy my own ideas, as no doubt other gentlemen would like to amend it so as to suit their own peculiar views.

On one side of the House the objection is taken, that by striking out what my amendment proposes to strike out, the section would be left too loyal, while, on the other hand, the gentleman who last spoke seems to think it would not leave it loyal enough. Perhaps the true medium is just between the two extremes—*in medio tutissimus ibis*. It leaves, as the only clause in the Constitution on this subject of paramount allegiance, the clause already there—"But the paramount allegiance of every citizen is due to the Federal Government." That clause—precisely that, no more and no less—is in the Constitution of the United States. It may not be necessary to insert it here in our Constitution; but in these days of secession heresy it has been thought best that Nevada should recognize that doctrine fully in her fundamental law—that she should assert it full out, flat-footed; and I think she should. Other States have not done so in their Constitutions, it is true; but that is because the question has not been raised heretofore practically on that point, as it has been during the last few years, under the clause in the Constitution of the United States. I understand that what we mean to express is no more and no less than that the Constitution of the United States, and the laws of the United States, and all treaties made by the United States under the authority of the Constitution, shall be the supreme law of the land. The Constitution of the United States says that. The language of that instrument is:—

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Now if there were no compact or agreement of this kind in the Constitution of the United States, then the people in each of the sovereign States would, as the secessionists claim, owe paramount allegiance to that State. But the bargain is made. It is written down in the Constitution of the United States, and it is a bargain that nobody has any right to secede from, any more than the maker of a promissory note can secede from his promise to pay, without paying the note. We say the paramount allegiance of every citizen is due to the United States. No matter if the State does undertake to withdraw its allegiance, the allegiance of the citizen is still due to the United States. That means that he is a citizen of the United States all the time—that he owes all allegiance and duty to the United States, and the United States in return owes protection to him, no matter what the State may do. And if the laws of the State come in conflict with the Constitution and laws of the United States, then the question comes up under which sovereignty the citizen is to act. Then there must be a paramount allegiance, because it must be that one has a higher claim than the other, for if not, how is the conflict ever to be decided? When that question comes up, then we say the citizen must go where the United States leads. It does not mean merely that you submit to that law of the United States, but that you owe service to the United States, as in feudal times the vassals and serfs owed allegiance and service to the liege lord. That is what it means. And the portion of the section proposed to be cut off is merely surplusage, as it seems to me. I would not disturb it, if nobody else did, because it does no harm; but when the question comes up—when we have begun to amend and improve—then, I say, let us do it thoroughly.

The language of the section goes on, and gives a gloss, or construction, to the first clause—as to the seceding of States, and the power of the Government to use force, if they undertake to secede. Why should it not go on just as well to say, that under the Federal Constitution the Congress of the United States has power to return fugitive slaves; that it has power to make the judicial records of one State legal proof in another State? Why does it not go on to enumerate the whole list of the powers vested in Congress, and give our gloss and construction to the entire instrument? It seems to me, while I admit the truth of this portion of the section perfectly—the whole of it—that that one clause, "the paramount allegiance of every citizen is due to the Federal Government," covers the whole thing, and expresses it ten thousand times more forcibly, more clearly, and indisputably, than we can express it, I fancy, by the addition of all this surplusage.

Now, as I have said, I would very much prefer that no question should be raised, but that we should let the section stand as it is. I only say that if the Convention is in a mood for amendment, then we should allow this one clause to stand there alone. It is sharp, clear, decisive; it expresses just what we mean, and it is more impressive than it would be to have the addition of all this which I propose to strike out.

I do not like the other addition, proposed by the gentleman from Humboldt, (Mr. Banks.) I am not prepared to say, at this moment,

whether or not I would like the addition proposed by the gentleman from Storey, (Mr. Fitch,) in regard to the matter of decisions by the Federal Judiciary. Exactly to what extent it is to go I am not prepared to say. I think, however, that there are two other coördinate departments of the General Government beside the Judiciary; and I think, possibly, we should recognize the fact, that some questions the Legislative and Executive departments must decide for themselves. I am not prepared, therefore, to vote for that amendment. I am not prepared, certainly, to say that every decision of the United States Supreme Court is to be accepted as indisputably right. Of course, any decision of that tribunal is the law, in the case in which it is given, and must be obeyed as the law in that case. But I remember that the Federal Judiciary decided that the fugitive slave law was constitutional; and I should be sorry to think that I was precluded from raising that question again, in every way I could, convinced as I am that that decision was a most flagrant and gross abuse of power. It may be that, upon examination and reflection, I shall come to the conclusion that this addition, as regards decisions by the Supreme Court of the United States, is all right, but I am not now prepared to say it is, and it strikes me that it might bring about confusion.

Mr. FITCH. Will the gentleman allow me to ask him a question? Do I understand him to say that each of the three coördinate branches of the Government have a right to pass upon the constitutionality of the laws enacted by Congress?

Mr. NOURSE. Certainly not. But they are, nevertheless, the powers which must decide by their action, in some cases, whether their course is constitutional or not. I judge from the tone of the gentleman's remarks that he is rather too much inclined, as I look upon it, to favor certain doctrines of the old Whig school. Now, I wish to state that I was brought up in the strictest school of State Rights Democracy, and I continued with that party until it ran pretty nearly into secession, when I left it. I believe that General Jackson was right when he said, when the question came before him either to sign or to veto a bill establishing a United States Bank, that, notwithstanding the Supreme Court had held in prior cases, and in more than one instance, that Congress had the power to pass such a law, he conscientiously believed it to be his duty to veto that bill, because he must judge for himself as to its constitutionality. What I mean is this—that the Executive, in his action, must judge for himself what is constitutional and what is not. And when a question comes up in a Court of law, in a case at law, and is brought to the United States Supreme Court, as the Court of last resort, then the decision of the United States Supreme Court is the law in that case. There is no doubt about that. If the law is held to be constitutional by the Court, it is constitutional and binding in that case, and if it is held unconstitutional, it is unconstitutional in that case. Let the decision be on the one side or the other, the decision is law in that case. But the question may be raised again in a new case, and a future Supreme Court may decide it the other way. Hence I am not prepared to say, Mr. Chairman, that this would be a wise addition.

It seems to me that we have stated, in what this section says down to that point, all that need be stated, and then this addition, in regard to constitutional powers and the decisions of Federal tribunals would be mere gloss. The Constitution of the United States was very carefully prepared, and that Constitution, so carefully prepared, and so often and thoroughly discussed, in Congress, and in the Courts all over our land, must be the best interpretation of itself, and the best interpretation of this Constitution which we are framing. So far as the power of the United States Courts goes, I have no doubt that the sections of the Constitution which establish and define the powers of the United States Courts are the best interpretation. And the Constitution of the United States is the best definer of what the extent of our allegiance is. That we owe paramount allegiance to the Federal Government—that, whatever happens in our State, we are still subjects or citizens of the United States, and owe to the United States our service, rather than to our State—is all we say or need to say. That is all that our language can be twisted into when we say that we owe paramount allegiance to the Government of the United States. Though I am, for one, in favor of leaving the section as it stands down to "Federal Government," yet I have no feeling in the matter, and if I am voted down shall submit cheerfully.

Mr. EARL. I have at one time handed in a substitute which was not considered as being in order at the time, and as the matter seems to create considerable talk, I shall not press it, nor offer any other amendment, because it appears to me that the proposition of my colleague, (Mr. Fitch,) clears up the whole matter. I regarded this paramount allegiance clause as entirely surplusage, and I still think it is not necessary at all; but we find it here already, and since it is possible, if we strike it out, that we may be considered as being tender-footed on the question, I think the propriety of that course is at least doubtful. Therefore I am disposed to leave it there, although it is true that it makes the section a little longer than is really necessary. The amendment I proposed was to strike out this portion:—

But the paramount allegiance of every citizen is due to the Federal Government; and no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith, or perform any act tending to impair, subvert or resist the supreme authority of the Government of the United States.

If that were taken out we should still have all that is necessary. We recognize the powers

conferred by the Constitution of the United States upon the Government, and the right to enforce its authority, and that would be sufficient. But, at the same time, we find these lines in the document which we have adopted as our basis, and I fear that the attempt to strike them out at this time would be construed as a sign of weakness on the part of the Convention not at all in harmony with its known proclivities. I, for one, do not wish to have any one doubt my position on that score at all. Now, to avoid any further talk on the subject, I propose that we take the amendment which was offered this morning by my colleague, (Mr. Fitch.) That clears up the meaning of the whole thing, and, as it stands now, it is certainly ambiguous. If we do not do that, I hope we shall adopt the original section.

Mr. HAWLEY. I desire to say one word further. I should not have felt called upon to say anything more if the argument of the gentleman from Washoe, (Mr. Nourse), had not been so carefully worded. I think we occupy an extremely responsible position here. Everybody knows that in the contest pending now for the possession of the civil government of the United States for the next four years, there is a party thoroughly organized on this coast, watching every move, and seeking some "point of vantage" from which more effectually to promulgate their peculiar views. And I do assure gentlemen, from what I know of their purposes and designs, that the very act of striking out these declarations which follow the sentence—"but the paramount allegiance of every citizen is due to the Federal Government"—would prove a tower of strength to that party. And if it did not result in a triumph for the so-called but terribly misnamed Democratic party, I believe it would at least tend to make an immense difference in the vote of the Pacific coast as compared with the last two elections, and thus do more, when the result of the election shall be known, than we can readily conceive of, to strengthen the hands of those who are in arms against the General Government. Why, sir, it would be said at once that this Convention was disposed to pander to those men who are asking the Federal Government to lay down its arms and submit to a dishonorable peace. I believe that to be the fact, and I believe, moreover, to be as brief as possible, that if we insert at the proper place the words proposed by the amendment of the gentleman from Storey (Mr. Fitch), and the amendment offered by the gentleman from Humboldt, (Mr. Banks), all those men who would go upon the stump and attempt to convince people, who perhaps think little and read less, that we are bound hand and foot to the Federal Government, and have left to us only such rights as are usually accorded to municipal corporations, would find their mouths stopped. Those words would do more to condemn them than any other language we could use, because every man must know and admit, that he who refuses to subscribe to the doctrine that every citizen owes allegiance to the Federal Government, in the exercise of its functions as prescribed and defined by the Supreme Court of the United States, thereby stamps himself plainly and inadmissably with the brand of—call it what you will—Copperheadism, State Rights-ism, or any other ism that can be found in the ranks of that party and among those men who have plunged this country into the war that is now desolating its fair fields and its once happy homes. Therefore I trust that these amendments will be adopted, no one contradicting. They will be a tower of strength to the Union party, while on the other hand, their rejection would be the occasion of weakness to that party, and a tower of strength to those who are opposed to it and its principles.

Mr. PROCTOR. I hope that the amendment offered by the gentleman from Storey, (Mr. Fitch), will not prevail, but perhaps for different reasons than have been given by any who have heretofore spoken. It is a question of expediency as much as of anything else. I, for one, am in favor of a State Government, and I hope a Constitution will be adopted here which I can support. Now it is a well known fact that this clause—this paramount allegiance question—had more to do with the defeat of the last Constitution than any thing else in it, and I am satisfied that if you send it back to the people again to be voted upon with that clause in it, the result will be the same as it was at the last election. It seems to me that if you are going to adopt a clause which has already been decided on and rejected by the people, you might as well at once adopt the resolution which was offered yesterday by the gentleman from Humboldt, (Mr. Dunne), and adjourn your Convention and go home. If you take that course I do not see any necessity of our spending further time here. Not that I do not myself recognize the principles contained in that clause to a very great extent, but I regard their incorporation in the section as surplusage entirely. I think they are fully covered by the Enabling Act. That requires us, in the first place, to adopt the Federal Constitution, and we did that in the outset. Now, the allegiance we owe to the Federal Government is a natural allegiance, and it must be well understood, or at least it is sufficiently defined in the Constitution of the United States which we have already adopted. At all events, such a clause has never been inserted before in any other State Constitution, so far as I can discover, and there is nothing in the Constitution of the United States nor in the Enabling Act requiring it. The gentleman from Washoe, (Mr. Nourse), read a clause from the Constitution of the United States declaring that the Constitution and laws of the United States shall be the supreme law of the land, anything in the Constitution and laws of any State to the contrary notwithstanding. Well, we have adopted that already, and it seems to me that

is sufficient. I hope, for these reasons, that the amendment may be rejected, and I trust, in order that we may be able to prepare such a Constitution as the people will willingly indorse, that all matters relating to this question of paramount allegiance will be stricken out.

Mr. FITCH. I think the reason given by the gentleman from Nye, who has just taken his seat, for the defeat of the last Constitution, cannot be exactly correct. He is of the opinion that it was defeated because of the insertion of the Paramount Allegiance clause. Now, sir, he has a much higher estimate of the strength and influence of the party of which he is the able and able representative on this floor than I have, if he entertains that opinion. I do not think the late Constitution was defeated for any such reason. That may have been the reason why he, and others of his political faith, voted against it, but he must have fed upon some mighty Cesarian diet if he thinks that his party in this Territory could adopt or defeat anything. I think that Constitution was defeated by a combination of fortuitous circumstances. Some charge its defeat upon the Mining Tax clause; others to the Paramount Allegiance clause; some lay it to one thing, and some to another. I think myself that it was defeated because the bolting delegation from Storey County was not admitted into the Union State Convention. [Laughter.]

The CHAIRMAN. The Chair has a little account to settle in connection with that matter.

Mr. FITCH. I do not think we are framing a Constitution for six months or a year merely, but we are framing a Constitution to last when we are in our graves; and for that reason I am in favor, without particular regard to the effect upon the fall elections, of defining exactly what we mean. I differ from the views of the gentleman from Washoe (Mr. Nourse) most essentially. That gentleman is opposed to inserting the words "in the exercise of all its constitutional powers, as the same have been or may be defined by the Federal Judiciary," not because Congress or the Executive have any right to construe the law, but because they must be judges of their own powers in certain contingencies; and he cites in illustration the case of General Jackson and the United States Bank. Now, I do not think that case applies at all to this sentence, as it is worded here. We say: "The paramount allegiance of every citizen is due to the Federal Government in the exercise of all its constitutional powers, as the same have been or may be defined by the Federal Judiciary." Now, while I concede that each department, the Executive and Legislative, as well as the Judicial, may be its own judge of the constitutionality of laws coming within their respective spheres, I do not allow that the private citizen has the right to be his own judge of the constitutionality of an act of Congress. The only way in which he can oppose such an act is in the courts, and if it is decided to be constitutional by the courts, it is his duty to obey it till the decision is reversed or the law repealed. Although it is true that the decision may be reversed, still until it is so reversed it is his duty to obey it. I would insert the words "in the exercise of all its constitutional powers," not out of any desire to cater to any disloyal sentiment, nor with the idea that they will have any such effect, but simply to define what we mean, to let those who are to come after us understand what we mean when we say "the paramount allegiance of every citizen is due to the Federal Government." Of course it is not due to unconstitutional acts of Congress, but only to those acts that are constitutional.

Mr. DELONG (interrupting). I would suggest that the hour of recess is approaching, and unless we get to a vote now on this question and get it out of Committee, we shall have to discuss it all over again.

Mr. FITCH. I will not detain the Convention further. I ask that the question be stated.

Some discussion took place as to the priority of pending amendments under the rules.

The CHAIRMAN decided that the vote must first be taken on the amendment offered by Mr. Banks, (as modified at the suggestion of Mr. Fitch,) and then on the amendment proposed by Mr. Nourse, to strike out the latter part of the section.

Mr. BROSNAN. The question seems to have taken a different course from what I expected. I had proposed to myself to have an opportunity, after the amendment offered by the gentleman from Washoe should be disposed of, to submit an amendment to that of the gentleman from Humboldt (Mr. Banks); but if the question be taken now on the amendment of the gentleman from Humboldt I may be precluded.

The CHAIRMAN. Certainly not; the section can still be amended in any other respect.

The question was taken on the amendment offered by Mr. Banks, as modified at Mr. Fitch's suggestion, and it was agreed to.

The question was then taken on the amendment offered by Mr. Nourse, and it was not agreed to.

Mr. BROSNAN. Now a further amendment is in order, I suppose. I merely present it, and do not propose to discuss it. It is an amendment which I offered in the last Convention, and I repeat it now, believing that it would obviate all the difficulties which have been apprehended. I will ask that the section be read as it will stand if my amendment shall be adopted.

The SECRETARY read as follows:—

Section 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it. But no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith, or to do any act tending to impair, subvert or resist the supreme authority of the Government of the United States.

Mr. WARWICK. Notwithstanding that the

clock has been stopped, and our thanks may be due to our modern Joshua for arresting the wheels of time, still time rolls on, and the time for our recess has arrived. I, therefore, move that the Committee rise, report progress, and ask leave to sit again.

Mr. DeLONG. That would leave our business unfinished in the Committee.

Mr. EARL. I hope the motion will not prevail; we are in a condition now to come to a vote.

Mr. DeLONG. I hope it will not prevail, for the members of the Committee cannot come back after recess with the subject fresh in their minds. Let us vote.

Mr. BROSNAN. To relieve the Committee from any embarrassment, I withdraw the amendment for the present.

The question was taken on the motion that the Committee rise, report progress, and ask leave to sit again, and the motion was agreed to.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration Article I, entitled Declaration of Rights; had made some progress therein, and had instructed him to ask leave to sit again.

The report was received, and leave granted accordingly.

The hour (12 o'clock,) fixed by resolution for recess having passed, the President declared the Convention at recess until one o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at one o'clock, P. M., and was called to order by the President.

ORDINANCE CONCERNING SLAVERY, ETC.

Mr. COLLINS. By reference to the latter clause of the fourth section of the Enabling Act, Mr. President, you will observe that it is required of this Convention to establish by ordinance certain provisions in regard to slavery, in regard to religious toleration, and in regard to the public lands, yielding all right and title to them to the Federal Government. In obedience to that requirement, I have drafted an ordinance, which, with your permission, I will read:—

ORDINANCE.

In obedience to the requirements of an act of the Congress of the United States, approved March 21, 1864, to enable the people of Nevada to form a Constitution and State Government, this Convention, elected and convened in obedience to said Enabling Act, do ordain as follows, which Ordinances shall be irrevocable, without the consent of the United States and the people of the State of Nevada:—

First—That there shall be in the said State of Nevada neither slavery nor involuntary servitude, otherwise than for the punishment for crimes whereof the party shall have been duly convicted.

Second—That perfect toleration of religious sentiment shall be secured, and no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship.

Third—That the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that the lands belonging to the citizens of the United States residing without the said State shall never be taxed higher than the land belonging to residents thereof; and that no taxes shall be imposed by said State on lands or property therein belonging to or which may hereafter be purchased by the United States.

Mr. BANKS. Is it proposed to pass this independent of the Constitution? It occurred to me, from the reading of the Enabling Act, that the design was to have something of this kind incorporated in the Constitution, although I admit that the language—"on behalf of the people," and so on, would tend to lead one to an opposite conclusion. The reason why I thought so, was that in the first part of the Section 4 of the Enabling Act it is provided that, after the organization, the Convention "shall declare, on behalf of the people of said Territory, that they adopt the Constitution of the United States. Whereupon the said Convention shall be, and it is hereby authorized to form a Constitution and State Government for said Territory." And then follows the requirements for the disclaiming of these things here enumerated. I think, from the connection and order in which these things occur, that this proposition should constitute a part of the Constitution, but upon that point I would like to hear from gentlemen who have reflected more upon it than I have myself.

The PRESIDENT. If the Convention will permit the Chair to make a suggestion—I have had some consultation with the framer of that ordinance, and it seems to me to be anticipated by the Enabling Act that something in this shape should be introduced, and become a part of the Constitution, under the name or in the garb of an Ordinance. And for the action proposed, we have a precedent in one State, at least, where there has been, previously, similar action,—for instance, in the State of Kansas, where the Ordinance, in the Constitution as published, is made to precede all other matters, under the name of "Ordinance."

Mr. COLLINS. I have it here. It is headed, "The Constitution of Kansas, adopted July," etc., and then follows the "Ordinance."

Mr. BANKS. Connected with, and following the heading of the Constitution? That covers the whole ground.

Mr. COLLINS. Then follows the Bill of Rights, and then the different Departments.

The PRESIDENT. I suppose it is perfectly competent for the Convention to make that arrangement.

Mr. BANKS. I suggest, then, that the Ordinance take its second reading by title.

Mr. CHAPIN. I suggest the propriety of incorporating with the Ordinance the resolution adopted yesterday. We are getting too many separate and distinct documents. We have been required to pass a resolution adopting the Constitution of the United States, and

I would like to see that resolution incorporated with this Ordinance.

Mr. CROSMAN. I suppose that can be arranged hereafter. I move that the Ordinance be read a second time by title, and referred to the Committee of the Whole.

The question was taken, and the motion was agreed to.

The Ordinance was read a second time by title, and referred accordingly.

RESOLUTION ADOPTING THE U. S. CONSTITUTION.

Mr. CHAPIN. Now I move that the resolution adopted yesterday, be also referred to the Committee of the Whole.

The PRESIDENT. That resolution has already been adopted by the Convention, and it would seem superfluous now to refer it.

Mr. DeLONG. We might reconsider the adoption of the resolution.

Mr. BROSNAN. I suppose all there is to be done, is to give the resolution a place in connection with the Constitution. Its adoption is all that the Enabling Act requires.

Mr. COLLINS. I suppose it should be adopted with all the formalities. If through inadvertance or haste we have adopted it in an improper manner, I hope we shall reconsider it.

COL. CRADLEBAUGH.

Mr. HAWLEY. I observe that there is a distinguished gentleman in the House, whom I am sure we all delight to honor, and I move that Col. Cradlebaugh be invited to take a seat within the bar of the Convention. [Applause.]

The PRESIDENT. I suppose to that motion there is no dissenting voice. Col. Cradlebaugh will please take a seat inside the bar.

Col. Cradlebaugh came forward within the bar and was provided with a seat.

THE RESOLUTION—AGAIN.

Mr. COLLINS. To facilitate matters, I move to reconsider the vote by which the Convention yesterday passed the resolution adopting the Constitution of the United States.

The PRESIDENT. The first duty of the Convention was to adopt that resolution. That was required to be done before the adoption, even, of any rules; and the records of the Convention show that it has been done. That is all, in the opinion of the Chair, that devolved upon the Convention to do; and that having been done, and evidenced by the records of our proceedings, it stands in a position different from any other subject matter before the Convention. If, however, it is the opinion of the Convention that anything more is necessary to perfect the adoption of the Constitution of the United States, the Chair will be happy to put any motion which may be made.

Mr. TOZER. The Enabling Act itself, I was about to observe, prescribes the time when this act was to be done—the adoption of the Constitution of the United States—namely, immediately following the organization of the Convention; and now, after the lapse of a day or two, to reconsider the vote by which we complied, at the proper time, with the requirement of the Enabling Act, seems to be out of place, at least, if not out of order. I oppose the motion on that ground.

Mr. COLLINS. As the reconsideration does not meet with the approbation of the Convention, I withdraw the motion.

COMMITTEE OF THE WHOLE.

On motion, the Convention resolved itself into Committee of the Whole, (Mr. CHAPIN in the Chair,) for the consideration of the Ordinance just previously introduced by Mr. Collins, in relation to slavery, religious toleration, and the public lands.

ORDINANCE CONCERNING SLAVERY, ETC.

The Ordinance was read by the Secretary.

Mr. DeLONG. I move that the Committee rise, report the ordinance back to the Convention, and recommend its passage.

Mr. STURTEVANT. I would inquire if this ordinance would not conflict with our right to the sixteenth and thirty-sixth sections of the public lands, which belong to us, under the Enabling Act.

Mr. COLLINS. In answer to that suggestion, I will say that the Enabling Act provides that the sixteenth and thirty-sixth sections in every township, or their equivalents in other lands, where such sections have been otherwise disposed of, shall belong to us for common schools; and, in addition to that, there are numerous other grants of public lands. Further than that, we are to be admitted on an equal footing with all the other States, which gives us the swamp and overflowed lands within our limits. This ordinance will not conflict with those rights and grants at all.

The question was taken on the motion that the Committee rise and report the ordinance back to the Convention, and it was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration the Ordinance relating to slavery, etc., and had instructed him to report the same back to the Convention without amendment, and recommend its passage.

On motion of Mr. DeLONG, the report was received and the Ordinance placed on file.

COMMITTEE OF THE WHOLE.

On motion of Mr. DeLONG, the Convention resolved itself into Committee of the Whole, (the President remaining in the chair), for the further consideration of Article I, entitled Declaration of Rights.

PARAMOUNT ALLEGIANCE.

The question was stated on agreeing to section two, which was read by the Secretary, as heretofore amended, as follows:—

Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people; and they have a right to alter or reform the same whenever the public good may require it. But the paramount allegiance of every citizen is due to the Federal Government in the exercise of all its constitutional powers, as the same have been or may be defined by the Federal Judiciary; and no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith or perform any act tending to impair, subvert or resist the supreme authority of the Government of the United States.

Mr. BROSNAN. I now offer my amendment. I propose to amend section two so as to read as follows:—

Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people; and they have a right to alter or reform the same whenever the public good may require it. But the power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith, or to do any act tending to impair, subvert or resist the supreme authority of the Government of the United States.

Mr. DeLONG. I rise for information in regard to the section as it now stands. As I understood the Secretary to read it, we have already stricken out the latter part of the printed section—all after the words "Government of the United States"—but I did not so understand the action of the Convention.

The SECRETARY. I so understood it.

Mr. DeLONG. No, sir; nothing was stricken out. Only the words were inserted—"In the exercise of all its constitutional powers, as the same have been or may be defined by the Federal Judiciary."

The SECRETARY. I understood that the proposition of the gentleman from Storey, (Mr. Fitch), was not only to insert certain words, but to strike out the latter part of the section; and that it was accepted by the gentleman from Humboldt (Mr. Banks).

Mr. FITCH. My motion was that we leave all there—at the words "Government of the United States"—striking out that latter portion of the section. I regarded it as entirely unnecessary.

Mr. DeLONG. Well, then, most certainly there has been a misunderstanding.

The CHAIRMAN. If that was the amendment, I voted under a misapprehension.

(Several voices—"So did I.")

Mr. BANKS. When the gentleman from Storey offered his amendment, I asked what he intended by it, and he said he intended nothing more than to add, after my amendment, the words, "as the same have been or may be defined by the Federal Judiciary." It was with that understanding that I accepted the amendment.

Mr. FITCH. It is true that I stated that as my object; but at the same time my amendment went further, as will be seen by examination. It was read as I offered it, and in my remarks I referred to the concluding portion of the section as unnecessary or surplusage. I supposed it was understood by the Convention.

Mr. BANKS. The words I sent up were simply these: "Amend by adding after the word 'Government,' in line seven, the words 'in the exercise of all its Constitutional powers.'" And to that was added these words: "As the same have been or may be defined by the Federal Judiciary." Those words were inserted, and I certainly voted under a most monstrous misapprehension if anything was stricken out.

Mr. DeLONG. I will ask my colleague nearest me, (Mr. Brosnan), to consent to withdraw his amendment for a moment, in order that we may get this misunderstanding straight. I will then move to amend the section as it now stands by adding the portion which has been stricken out through a misapprehension.

Mr. BROSNAN. Very well; I withdraw it.

Mr. DeLONG. I now move to amend section 2 by adding the words which follow "Government of the United States," in the Section as printed, to wit:

"The Constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whensoever any portion of the States, or people thereof, attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by warrant of the Constitution, employ armed force in compelling obedience to its authority."

Mr. FITCH. I am willing to accept the amendment. I am not tenacious about it, but I do not think the language is necessary.

The question was taken, and the amendment was adopted.

Mr. BROSNAN. I now renew my amendment.

The SECRETARY again read Mr. Brosnan's amendment.

Mr. BROSNAN. I wish, Mr. President, to say a word or two in regard to my position, in offering this amendment. I acknowledge perfect adherence to and belief in the truth of the section as it now stands in the old Constitution. There is not an idea or a word in it to which I do not yield implicit credence and obedience. I consider, however, that the last part of the section, commencing with the words—"The Constitution of the United States confers full power" might very well be left out, because all expressed therein is necessarily implied as one of the first principles of governmental existence. Every government must have that vital element of power, or it is no government. It must necessarily be able to enforce obedience to its authority in all respects. Hence, upon the ground of its being superfluous, I would have that portion omitted. And inasmuch as some gentlemen have expressed dissatisfaction with the term "paramount allegiance," I have omitted those words also, in order that we may unite as speedily as possible upon the idea, or upon a section which shall accord all the vitality and power to the Government that could be embodied in it by the use of those words, and at the same time not give offense to any person. In this way, I trust, we may come to a vote speedily, and dispose of this difficult question.

Mr. STUBTEVANT. I desire to ask whether this is a substitute for the whole section or an addition.

Mr. BROSNAN. If it is adopted as I offer it, it will be a complete section of itself.

The question was taken on the amendment offered by Mr. Brosnan, and upon a division it was not agreed to—ayes, 6; noes, 20.

The question recurred upon the adoption of Section 2, as amended.

Mr. DeLONG. I move, instead of adopting the section by a vote, that when the Committee rise they report Section 2 back to the Convention, as amended. I think that would be a more proper course.

The CHAIRMAN. It occurs to me that we had better adopt the sections as far as we go, and then when we get through with the Article the motion to report back will apply to the whole. After the Committee has amended and adopted the sections as a Committee we can go back into Convention and adopt the amendments of the Committee, or further amend.

Mr. DeLONG. Very well. I will ask for the reading of the section as it now stands, before the vote is taken on its adoption.

The section, as amended, was read as follows:—

"SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. But the paramount allegiance of every citizen is due to the Federal Government, in the exercise of all its constitutional powers, as the same have been or may be defined by the Federal Judiciary; and no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith, or perform any act tending to impair, subvert, or resist the supreme authority of the Government of the United States. The Constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whensoever any portion of the States, or people thereof, attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by warrant of the Constitution, employ armed force in compelling obedience to its authority."

The question was taken on the adoption of the section, as read, and it was adopted.

TRIAL BY JURY.

Section 3 was read, as follows:—

SEC. 3. The right of trial by jury shall be secure to all, and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law; and if three-fourths of the jurors agree upon a verdict, it shall stand and have the same force and effect as a verdict by the whole jury; provided, the Legislature, by a two-thirds vote of each branch thereof, may require a unanimous verdict notwithstanding this provision.

Mr. FITCH. I move to amend the section by striking out all after the words "prescribed by law."

Mr. DeLONG. As an amendment to the portion proposed to be stricken out, I move to insert after the word "jurors," the words "in civil cases," so as to read "and if three-fourths of the jurors, in civil cases, agree upon a verdict," etc.

Mr. CHAPIN. You will find that, "in all civil cases," a line or two above.

Mr. DeLONG. That only applies to waiving a jury.

Mr. HAWLEY. If the gentleman will give way for a moment I will offer an amendment which I think will cover the case as he desires. I will move to insert after the words "upon a verdict," the words "in civil cases."

Mr. DeLONG. That only puts it in a different place. My object, and I presume the object of the gentleman from Douglas in the same, is this: I am willing to allow a three-fourths verdict in civil cases, but I want to require a unanimous verdict in all criminal cases. As it now stands, three-fourths of a jury may convict a man of a criminal offence, the wisdom of which innovation I doubt.

Mr. HAWLEY. We cannot be too explicit in cases of so much importance, where the construction of the constitutional provision might be difficult, and perhaps disputed.

Mr. DeLONG. I think the amendment will come in better after "jurors" than after "verdict," although I have read it hastily. Or suppose we insert it between "and" and "if," so as to read "and, in civil cases, if three-fourths of the jurors agree upon a verdict," etc.

Mr. BANKS. That will make it good language.

Mr. HAWLEY. I will accept that as my amendment.

The CHAIRMAN. Under the rule, the question will first be on the amendment of the gentleman from Douglas, (Mr. Hawley,) as modified by the gentleman from Storey (Mr. DeLong).

The question was taken, and on a division the amendment was agreed to; ayes, 22—noes, 6.

The question recurred on the amendment offered by Mr. Fitch, to strike out all the section following the words "prescribed by law."

Mr. BANKS. I have an amendment which would be in order now, but I prefer that the vote should first be taken on the proposition now before the Convention.

Mr. FITCH raised a question of order, that after a vote striking out or refusing to strike out a portion of the section, it would not be open to amendment.

After some discussion, the Chairman decided that it would be necessary to perfect the clause before taking the vote on the proposition to strike out.

Mr. BANKS. Then I will offer my amendment now, as it proposes to perfect that portion which the gentleman from Storey desires to strike out. I move to insert after the word "if" the words "the number prescribed by law, which shall not be less than;" also, to strike out the whole of the proviso following the words "the whole jury;" so that the section would read:

SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law; and in civil cases, if

the number prescribed by law, when shall not be less than three-fourths of the jurors agree upon a verdict, it shall stand, and have the same force and effect as a verdict by the whole jury.

What this amendment affects, or what I propose to accomplish by it, is simply this: To provide that the Legislature shall, in its discretion, prescribe by law that any portion of a jury above and including three-fourths shall decide a civil case. That is the proposition embraced in my amendment, and nothing else. As this section now stands there is a provision to the effect that the Legislature, by a two-thirds vote of each house, may require a unanimous verdict; so that, as it now stands, there is a discrimination in favor of allowing three-fourths to render a verdict, while I propose by my amendment to make a discrimination against the three-fourths verdict.

Mr. FITCH. I will not detain the Convention two minutes, but here is as good a place as any to express my opposition to this whole theory of a three-fourths verdict. I consider it an innovation, and nothing else but experimental legislation, and I think no organic law in the least place in the world in which experimental legislation should be permitted or tolerated. I know that there are arguments against compelling an entire jury to agree before returning a verdict, but I think it is better to

"bear those ills we have
Than fly to others that we know not of."

And I think this thing has never been attempted in any other State in the Union. It is an experiment taken from the jury system of Scotland, and I believe it would be about as ill fitted to this State as to any other in the world. I have no doubt that the proposition will pass, but I desire to enter on the record my opposition to it.

Mr. HAWLEY. Not knowing what the action of the Convention was likely to be on this subject, I favored the amendment which was first proposed by the gentleman from Storey, (Mr. DeLong,) and for which my amendment was afterwards substituted. But my mind is decidedly made up in opposition to the innovation which has been referred to by the other gentlemen from Storey, (Mr. Fitch.) I cannot conceive that any good can possibly result from it. It is a well known fact to all attorneys and counsellors-at-law that very frequently parties litigant, availing themselves of the right given to them by the statute, choose to have their cause tried by a smaller number than twelve jurors. Frequently five jurors, or seven jurors, perhaps, are selected to try a case; and in either of those cases it would, of course, be impossible to get a three-fourths vote of the jury; and then the result would be that the case would have to be remanded for a new trial, an event now of very frequent occurrence in the case of a jury's failing to agree. I contend for the life of me see how any good is to result to our judicial system from this innovation. I voted for the amendment because I did not know whether this part of the section would be ultimately stricken out or not; but I intended to move to strike it out myself, if nobody else had done so. I sincerely trust, in view of the difficulties which would surround the experiment, if adopted, and in view of the facts that experimental legislation is dangerous, and that the jury system of our country, as at present organized and established, furnishes sufficient protection to life and property, that the motion of the gentleman from Storey, (Mr. Fitch,) will prevail, and that all relating to this three-fourths experiment will be stricken out by the Convention.

Mr. DeLONG. If I feared that the adoption of this article, or the defeat of the amendment of my colleague, (Mr. Fitch), would ever produce such a disastrous result as to compel a District Judge to divide a man up into fractions in order to get an exact three-fourths vote of a jury, I should certainly vote for the amendment. But I have much an abiding confidence in the intelligence and humanity of the judges, that I do not believe they would ever allow a case to go to a jury of twelve, or of any less number, in such a way that it would be necessary to cut anybody up in order to get a fractional verdict. Now I will state that, as my colleague has said, it is true that this is an innovation upon our present jury system, but we find a precedent for it in the Scottish law, and the experience of that country, for many years, has been favorable to its operation. It is just such an innovation, it strikes me, as we need in this country. In my experience as an attorney, I find it is the man that has a bad cause, rather than he who has a good one, who, as a general thing, asks for a jury, with the hope of getting upon that jury at least one man of his way of thinking, in order to "hang" the jury.

The CHAIRMAN. Then that one juror would be less humane than the judge you referred to; the one would divide up one man only, while the other would hang the whole jury. [Laughter.]

Mr. DeLONG. Well, I know a great many jurors that, no doubt, ought to be hung. But, in all seriousness, Mr. Chairman, I do think that this would be an innovation which would be indorsed by the people. I remember that, last fall, when this Constitution, which we are now seeking to alter and improve, was earnestly assailed by men exceedingly desirous and anxious to find something in it which they could find fault with before the people; when they came to that clause, the only objection they would venture to urge was, its applicability to criminal cases. They referred to the hardships which might result to persons unjustly accused of crime, and cited cases where one man alone, on a jury, had stood out, with apparent obstinacy, against a verdict of guilty, and the event had proved that he was correct, and by his firmness had saved an innocent man from the scaffold or the dungeon. And they insisted that

such sacred rights as life and liberty should be carefully guarded, and not be allowed to be put in jeopardy by anything less than the unanimous verdict of twelve of a man's peers—that unless a jury of twelve impartial men all agree that he is guilty, the man shall not go to the scaffold or the dungeon—that the case should be so clear as to convince the minds of the whole twelve, or that mercy should intervene with a doubt, and snatch the accused from the impending danger. But no one questioned, during that canvass, the propriety of the three-fourths verdict in civil cases, because it is well known that there is no place under the canopy of Heaven where, in the experience of man, it has been found so difficult to prevent one man at least, on a jury, from being tampered with, as in this country; and especially in these mining cases, involving immense interests. One man stands out, and thus enables a company to continue in possession of a rich mine, administering its proceeds, and enjoying its revenue, to the detriment of the proper owners, all through the trickery, and dishonesty, perhaps, of that one man, until, in the course of time, perhaps a year or two, the case comes up on the calendar for a new trial. I think this is an innovation to which the people will consent, and that the verdict by three-fourths or more of a jury, will be found in practice fully as safe, and even more likely to be right, than where one single juror has the power to stand out and "hang" the jury.

Mr. EARL. I hope the section will be allowed to remain as it is. I have heard in Virginia City of cases of this kind, where men have been known to say in advance that such and such cases could never come to trial, because, as they said, "we can hang the jury." I think it is necessary for the general interest and good of the country, and for the progress and development of our mines, that we should retain that section as it now stands. The civil cases which come before our Courts are of great importance, differing in that respect from those of California, or of any other State in which we have had any experience. I think we certainly should adopt this provision for a three-fourths verdict.

Mr. WARWICK. I perfectly agree with the gentleman from Storey, (Mr. DeLong,) in regard to the amendment proposed, providing that a unanimous verdict shall be required in all criminal cases. But there is surely less danger of injustice being done by a two-thirds verdict of a jury in civil cases than there would be under the requirement of a unanimous decision. As the gentleman has urged upon the Convention, it is the easiest matter in the world, in cases pending before the Courts with probably a million of dollars, more or less, in the balance, to get at least one individual on the jury who can be improperly influenced. It would certainly be easier to do that than it would if a verdict could be rendered by eight or nine out of the twelve. The object, undoubtedly, of all trials in the Courts is to secure justice to all parties, and that being done, it is all the law requires. The important point is to get at the readiest and surest means of securing justice, and if any gentleman can prove to me that a unanimous verdict will be more likely to secure that end than a two-thirds or three-fourths verdict would, then I certainly should vote for the former proposition.

Still, in a criminal case, where the life of an individual may be trembling in the balance, I should be in favor of requiring a unanimous verdict, preferring rather to allow ninety-nine guilty men to escape than that one innocent man should suffer. But in a civil case, and, sometimes, perhaps, one of the utmost importance, involving millions, or, at all events, hundreds of thousands of dollars, I certainly think that a three-fourths verdict would be more apt to secure justice to all parties than a unanimous verdict would be likely to do. I suppose that there is no gentleman, either exercising any judicial functions or engaged in practising law in Nevada, but is fully aware of the manifest injustice which time and again litigants are subjected to, and the sometimes immense expense to which they are put, on account of there being some improper persons on the jury. Perhaps, while the party thinks that he has carefully guarded every avenue of approach, he finds that still, by some means or other, some one man out of the twelve has been secured to the adverse interest, and he loses the verdict. The man who is thus secured by the artful policy of one or other of the litigants, is enabled to defeat the ends of justice. I hope the proposition contained in this section will carry, however much it may be deemed to be or proved to be an experiment.

But, sir, it is not altogether an experiment. I believe that it has been tried in the State of Louisiana, or elsewhere, and that it is not, certainly, altogether confined to Scotland. Of this, however, I will not be positive. But, whether it is or not an experiment, I do not believe in sacrificing to any time-honored evil, simply because it has the sanction of time. If our present circumstances demonstrate to us that a new condition of things would be better for us, that a new system would work better in our country than the system of injustice to which we have submitted in the past, I am not, for one, certainly, afraid to try the experiment. Any melioration you might attempt to make, either in law or ethics, would meet with this same opposition in behalf of anything which has the sanction of time. You are always met with this old-time cry of "innovation!" No, sir! although I am in favor, where right guides the way, of treading in the beaten path, still, if innovation is necessary, I am not afraid to innovate. Why, sir, our government was an experiment in the past, but it has now the sanction of a great nation.

I hope in this case we shall not fear to innovate where the ends of justice demand the adoption of this change in our judicial system.

Mr. CHAPIN. The amendment proposed by my colleague, (Mr. Fitch), is to prevent this experiment, or this innovation, and to adhere to the old law, or rule of practice, of requiring a full verdict by a jury of twelve men. I hope that amendment will not prevail, because I want to try that experiment, or that innovation. This is the very country to try it in. Our circumstances are not like those of any other people in these United States. We are, as my friend from Washoe, (Mr. Nourse), remarked yesterday, mostly immigrants here. We are from all parts of the world, unknown to each other. We have our juries sitting upon cases where millions of dollars are at stake, and we are obliged to take men for such juries who are unknown to us, whose integrity has never had a test; and we know that it has been proved, time and again, that some of these men can be approached—that they can be bribed to stand out—and verdicts have, in that manner, been prevented in cases where the greatest injustice has thereby been done. I have resided more than four years in this Territory, and I can go out into this community and count up scores of men who have been ruined in that very manner; simply because twelve men were required to find a verdict, and perhaps one single man who stood out would prevent it. The result has been, that where poor men have been engaged in litigation with rich companies, they have been utterly unable to come into Court to try their causes over again. I see a great deal more safety in depending upon a verdict of three-fourths of a jury, than in requiring a unanimous verdict from twelve men whom you do not know. Therefore I hope the amendment will be voted down, and we shall adhere to the section as it stands. It will not apply to criminal cases, but to civil cases alone. And again, there is another safeguard in the fact that we leave it to the Legislature, so that if they, in their wisdom, think that the experiment does not work well, they can, by a vote of two-thirds, at any time alter the law, and require a unanimous verdict. I say, let us try it.

Mr. NOURSE. I am opposed to the amendment, for the reason that I like exceedingly this provision for a three-fourths verdict in civil cases. The reason for my objection to the present system is, that where interests of enormous magnitude are in litigation, it is quite easy to tamper with some one of the jurymen; but where a verdict can be rendered by three-fourths, it make the number to be tampered with larger, and therefore increases the difficulties in the way of such tampering. I can see no great difficulty or danger in it, for when we go into the Supreme Court, and two judges out of three decide against us, we do not complain.

But the gentleman from Douglas, (Mr Hawley), presents an argument against it on the score of humanity. Now I suppose that if a verdict by three-fourths of the jury is required, and a larger number than three-fourths should agree to it, it would not vitiate the verdict. The gentleman seems to think it would, and that, in such a case, instead of juries being "hung," they would have to be drawn and quartered. [Laughter.] I would like to know, if in the Scottish authorities, there are any cases mentioned of the division of jurymen in that way.

Mr. FITCH. Men who are engaged in the profession of the law do not naturally respect the jury system. They come so much in contact with the evils of that system that they are willing to do anything in order to mitigate them. Nevertheless, the people are wedded to the jury system, and I do not think we could adopt any clause which would be so hurtful to the chances of the adoption of our Constitution as this proposed innovation. My colleague, (Mr. DeLong) called our attention to the fact that nobody objected to this three-fourths verdict modification of the jury system, except in so far as it applied to criminal cases. Now, the gentleman's memory is certainly very much at fault. I can remember of hearing the gentleman's eloquent and most sonorous periods, and his loftiest flights, during the last canvass, over in Dayton, and Silver City, and Gold Hill, where he made speeches in which he called particular attention to this terrible innovation upon our jury system; a system, he said, which had been handed down to us from King John, from whom it was wrested in *magna charta* by the barons of Runnymede. That sacred guarantee of our liberties, he told us, had been interfered with by the Constitutional Convention of Nevada, and that innovation on our chartered rights he repudiated and denounced with all the force of his invective and sarcasm. Now, while I did not altogether indorse the entire accuracy of all my colleague's historical allusions, I do think that this is an innovation of at least doubtful propriety. So far as bribing jurors is concerned, I presume that if a man can "hang" a jury by bribing one man, he can, with a little more effort, accomplish the same thing by bribing three or four men.

Mr. DeLONG. Will the gentleman allow me to correct him? I do not remember the rounded periods and lofty flights to which he refers [laughter]; but if I did indulge in that style of argument, I must be pardoned for acting on the same principle as the man up in Kentucky, who, as the story runs, turned his jacket in order to save his life. But, Mr. Chairman, as all the delegates here are supposed to be politicians, I imagine that nobody is going to hold me to account for not recollecting all that I ever said on the stump. [Laughter.]

Mr. BROSNAN. I am not disposed to say much on the question now before the Convention, but I cannot see, for the life of me, why men are so wedded to the system of requiring a unanimous decision by twelve men. In the last Convention I introduced this innovation,

of it is unjust, and I suppose I may be considered, in some extent, bound to give the reasons why I did so. I will, however, relieved from all necessity by the full explanations given by gentlemen who favor the section as it now stands.

Still, I would ask gentlemen who are opposed to the section, at what time or period of time in the history of the world it became necessary to dispose of questions of interest between man and man by the unanimous decision of twelve men? As to the origin of juries, if history is not at fault, I believe they commenced with the Goths, long before the Saxons had anything to do with them. There were two juries, the extraordinary, and what was called the grand assize, or ordinary. The extraordinary jury was composed in this way: A summons was issued by the Sheriff of the county to four knights, who, upon meeting together, had the privilege of electing twelve others to sit with them. Then these sixteen retired to sit in judgment, and when any twelve of them agreed, their decision became a verdict. Then complete unanimity was not required, and we have no authority at all for requiring it, if we go back to the origin of the jury system. So, in cases before the High Court of Parliament, where the peer was tried by his peers upon the principle of the jury system; it was not necessary there that all should agree in the judgment. It was required that twelve should agree—a majority—but never less than twelve. So, in the Court of the Lord High Steward of England, it was only required that a majority should decide, but that majority must not be less than twelve. The particular number appears to have been a mere matter of fancy, but in no case was it requisite that there should be a unanimous verdict of the jury. And the practice was similar in an inquiry into a case of lunacy. A jury in a case *de lunatico inquirendo* was composed of seventeen, but the concurrence of twelve only was necessary to find the fact that the man was *non compos mentis*. And next we see further that in cases of coroners' inquests, twelve was necessary to render a verdict, and the practice came at length to be to summon only twelve upon such juries; and hence, I suppose, was the origin of the jury of twelve. When twelve only were summoned, of course they must unanimously agree upon a verdict. But one of the most learned gentlemen has said, Mr. Chairman, that it is strange that any such unanimity should be required of twelve men, where their passions and affections are different, as well in respect to their passing judgment upon rights between individuals as in regard to any other of the ordinary questions of life. In the determination of any other question of business, or otherwise, a majority is competent to determine either the right or the wrong of the question to be determined.

Another learned gentleman says:—

"The unanimity of twelve men is so repugnant to all experience of human conduct, passions and understandings, that it could hardly in any age have been introduced into practice by a deliberate act of legislation."

With these comments upon the question, I hope, sir, that the motion of my colleague will not prevail, and that we will maintain and adhere to the plan of a three-fourths verdict of juries in civil cases.

The question was stated on Mr. Banks' amendment.

Mr. BANKS. I will withdraw my amendment so as to get a direct vote on the amendment of the gentleman from Storey (Mr. Fitch).

The CHAIRMAN. The Chair is of the opinion that the vote upon that amendment would preclude any further amendment of that portion of the section.

Mr. BANKS. Undoubtedly so.

The question was taken on the amendment proposed by Mr. Fitch, and it was not agreed to.

Mr. HAWLEY. Inasmuch as this innovation prevails in the Convention, and inasmuch, too, as the learned gentleman from Storey, (Mr. Broman), has virtually attacked the principle that twelve men should constitute a jury; and, furthermore, inasmuch as it becomes our bounden duty to be as explicit as possible in expressing our meaning, and to leave no room for misconstruction, I move that this section be further amended by inserting after the words "unanimous verdict," the words "in such civil cases," so that the proviso will read:—

Provided, The Legislature, by a two-thirds vote of each branch thereof, may require a unanimous verdict, in such civil cases, notwithstanding this provision.

Mr. FITCH. There is no necessity for that amendment, I think.

Mr. HAWLEY. Very well, I will withdraw it.

Mr. FITCH. I desire to move to amend that proviso by striking out the words "two-thirds," and inserting "a majority," so as to provide that the Legislature, by a majority vote, may require a unanimous verdict.

It may be that I am entirely wrong, and that this innovation in our jury system is entirely right. If that be the case, then of course the State Legislature will indorse the proposition and reject mine. But I think we should be willing to leave all those matters to the people, so far as possible. And if we provide here that the Legislature may abrogate this provision, we give the people an opportunity to express their judgment upon it. I am in favor of doing that whenever it can be done without inconvenience.

The question was taken on Mr. Fitch's amendment, and it was not agreed to.

Mr. WARWICK. I move to amend, by inserting, after the words "civil cases," where they first occur, the words, "in all criminal cases where the offence amounts only to a misdemeanor."

My reason is this: as it stands at present, a

person charged with a small offense, as assault and battery, for example, has no right to waive a jury, even though he may be willing to plead guilty to the offense. Therefore I offer the amendment with a view to expedite the administration of justice.

The question was taken, and on a division, the amendment was not agreed to—ayes, 2—noes, 14.

The CHAIRMAN. There is one matter here, in regard to which I desire to make a remark, and it is a matter which I discussed and thought of much in the previous Convention. This section seems to establish a different rule for the passage of a law than is contemplated in other parts of the Constitution, and I suggest whether it would not be well to have uniformity in that respect. The Legislature, by a two-thirds vote, may over-ride the veto of the Governor, and it occurs to me that this provision, allowing the Legislature, by a two-thirds vote, to make the change, would differ with the general system adopted for the passage of laws by the Legislature.

Mr. NOURSE. If it is passed by a two-thirds vote originally, then of course, if it is vetoed, the Legislature will pass it again.

The CHAIRMAN. But it might happen that the bill would pass by a two-thirds vote, and then after it is vetoed it might not receive a two-third vote. The question is, then, under the language of the proviso, would the bill, notwithstanding, become a law? It seems to me that it will be better to give a definite meaning and construction to our labors, as we progress, so that if hereafter any question should arise, it may be determined by a reference to the reported Debates and Proceedings of the Convention.

Mr. EARL. I understand, from the reading of the section, that a two-thirds vote of the Legislature is all-sufficient to make the change.

Mr. DeLONG. I think that the plain construction of the article is, that the bill shall be passed by two-thirds of the Legislature before it can become a law by the signature of the Governor, and then it must be signed by the Governor and returned in order to become a law. In any event, if the Governor should veto it and return it, although it is passed by a two-thirds vote of the Legislature, it could not be contended that it became a law unless it was again passed by a two-thirds vote, over the Governor's veto. For instance—in order that I may be clearly understood—if it is passed by a majority vote, and approved by the Governor, it is not a law that would affect a change in the jury system. It must be passed, in the first place, by a two-thirds vote of the Legislature, and then it is immaterial whether it is approved by the Governor or not, because if it is returned with his veto, the same vote can pass it again, and it becomes a law over his veto. That is my construction.

[Mr. CHAPIN in the Chair.]

Mr. JOHNSON. The construction which I was disposed to place on this provision—a little out of place, perhaps, when occupying the Chair—was intended to obviate any difficulty which might possibly arise hereafter, in view of differences of opinion in this body. Now, as I understand the gentleman from Storey, (Mr. DeLong,) he contends that such an enactment would require the approval of the Governor, or if not so approved, would need a two-third vote of the Legislature to pass it over his veto. And my other friend from Storey, (Mr. Earl,) seems to entertain a different opinion. It is for this reason that I now call the attention of the Convention to the subject. I want the language so framed that there can be no possible misconception as to what we do mean. Here are two diverse views, or constructions, given by members of this body—and to my mind, that fact is suggestive of the great need of changing the language of the section in such manner that our views may be harmonized, so that hereafter there may exist no misconception of our meaning. Now, sir, I differ entirely with the gentleman from Storey who last spoke to this question, in the construction he has given to this proviso. As a proposition of law, it must be conceded that it is competent for this body to lodge the law-making power solely in the Legislative branch of the Government; and if we possess this unlimited power, is it not most assuredly within the province of the Convention to confer on them a part of this authority? Most assuredly so.

Mr. DeLONG. If the Chair will excuse the interruption, I will ask if this amendment will remove the doubt,—to insert after the word "Legislature," the words, "by a law passed;" so that the proviso will read:—

Provided, The Legislature, by a law passed by a two-thirds vote of each branch thereof, may require a unanimous verdict, notwithstanding this provision.

Mr. JOHNSON. Any words will do, that will render definite our meaning. If we require it to be done by an act requiring the same formalities that are observed in reference to other laws, then let us express it in such language as shall leave it certain. That is all I desire. I do not suppose it was the intention of the Convention to bestow the power solely on the Legislature. I think the amendment of the gentleman from Storey will obviate all difficulty. I have no objection to the section, as it is proposed. I know that the reasons urged, in the late Convention, for the incorporation of this proviso, were, that it might possibly be found, being but an experiment, unadvisable to retain the three-fourths verdict clause, and that power should be lodged somewhere, otherwise than in the general mode pointed out for amendments to the Constitution, to reenact the old rule of requiring a unanimous verdict. It was thought that the experiment might prove a failure, and if so, then the requisite two-thirds vote of the Legislature could be readily obtained to effect the change. Something has been said about a majority; but that having

was voted down, I think it is not advisable to leave the power with a mere majority of the Legislature to change a prominent feature in our Constitution.

[The PRESIDENT in the Chair.]

The question was stated on Mr. DeLong's amendment, to insert the words, "by a law passed," and the amendment was agreed to.

Mr. COLLINS. I desire to offer a mere verbal alteration. I move that between the words "jury," and "agree," be inserted, by way of amendment, the word "shall," so as to read, "if three-fourths of the jury shall agree upon the verdict." I think the propriety of the amendment will suggest itself to every mind.

The question was taken, and, on a division, the amendment was not agreed to,—ayes, 10—noes, 10.

Mr. DeLONG. I move that the section, as now amended, be adopted.

The question was taken, and the motion was agreed to.

RELIGIOUS TOLERATION.

Section 4 was read, as follows:—

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Mr. COLLINS. I will state that we have had before us an ordinance drawn by authority of the Enabling Act, which embodies the same general principles in regard to religious liberty and toleration. It appears to me to be entirely unnecessary, therefore, to incorporate this in the Constitution itself. I do not see that it will add any strength or force whatever to the Constitution, or to the principles set forth in this section.

Mr. DeLONG. It shuts up the bars, though, against polygamy.

Mr. BANKS. It seems to me that wherever else this provision belongs, it ought certainly to be here, in the regular order of constitutional arrangement. That ordinance is something which we are not likely to be very familiar with in the examination of the Constitution, but as it seems to have been required separate and apart from the Constitution, it may be well to pass it separately, as an ordinance; but, at the same time, it seems to me very well to pass this provision in this section just as it is, in the regular order of arrangement.

Mr. BROSNAN. There is a further reason why it should be retained, and that is, there is a provision here in relation to the competency of witnesses, and also a prohibition of acts of licentiousness, etc., neither of which are provided for in the ordinance referred to.

Mr. CHAPIN. I do hope the section will pass as it is.

The question was taken on the adoption of the section, and it was adopted.

HABEAS CORPUS.

Section 5 was read, as follows:—

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Mr. PROCTOR. I have an amendment to offer. I move to add to the section these words: "and then only by the Legislature, who shall be the judges of that necessity."

Several voices—"No, no!"

The PRESIDENT. The amendment is not seconded.

No other amendment being proposed, the question was taken on the adoption of the section, and it was adopted.

Section 6 was read, as follows:—

SEC. 6. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

No amendment being offered, the section was adopted.

Section 7 was read, as follows:—

SEC. 7. All persons shall be bailable by sufficient sureties; unless for capital offenses, when the proof is evident or the presumption great.

No amendment being proposed, the section was adopted.

THE GRAND JURY SYSTEM.

Section 8 was read, as follows:—

SEC. 8. No person shall be held to answer for capital or otherwise infamous crime, (except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature,) except on presentment or indictment of a grand jury; and in any trial, in any Court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation having been first made or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterwards made.

Mr. NOURSE. I wish to inquire as to the effect of that first clause. It would seem that that might shut out the authority for binding over by a justice by a preliminary examination, and yet my recollection is that it is the wording of the Constitution of the United States. If so, it is all right.

Mr. DeLONG. It is the language of the California Constitution.

Mr. NOURSE. I guess we can trust it, then.

Mr. FITCH. I would like to inquire in what portion of the Territory—I ask for information—we are likely to find men engaged in the "naval forces of the United States."

Several voices—"Carson river!" "King's Canon!" "Humboldt Lake!" "Lake Tahoe!" [Laughter.]

Mr. FITCH. Oh! I did not know; I simply inquired for information. There might possibly be naval forces over in Humboldt or Leader, somewhere. [Laughter.]

Mr. PROCTOR. I offer the following as a substitute for Section 8:—

"Sec. 8. All criminal offenses (except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this state may keep, with the consent of Congress, in time of peace, and in cases of petit larceny and other offenses as may be regulated by the Legislature,) shall be tried upon written complaint or accusation to be made by the prosecuting officers of the respective counties of this State, without the intervention of a Grand Jury, unless the Legislature shall otherwise provide. Laws shall be enacted to regulate the proceeding and to give effect to this provision. And in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation having been first made or secured."

That section embodies the substance mainly of the original section, with the exception of doing away with the grand jury system. Whilst innovations on the jury system seem to be the order of the day, and as it has been a question in my mind for many years whether grand juries should not be abolished, I have thought proper to introduce this amendment. I may state, from my own experience in regard to the jury system, that the burdens of taxation imposed upon counties in this Territory, and in California, have arisen mainly from the extraordinary manner of trying cases before a grand jury. It seems to me, therefore, that some amendment of that kind ought to be adopted, or that the experiment should be tried, at least, if we are disposed to change the jury system at all. For that reason I have submitted the amendment for the consideration of the Convention, but I do not propose to argue it.

The question was taken, and the amendment was not agreed to.

SECURITY FOR PRIVATE PROPERTY.

Mr. DELONG. I wish to call attention to one thing in the last few lines of this section. It says:—

"Nor shall private property be taken for public use without just compensation having been first made or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterwards made."

We can easily imagine a case where it is essentially necessary for the public good that private property should be taken for public use, and yet the party owning it might refuse to allow it to be taken; and in that case it strikes me there should be a sufficient guarantee of compensation, if it is taken. Would it not be proper to make use of the words "made, secured, or tendered," instead of as it now stands, "made or secured?" I do not see how it could be "secured," although I can see how it might be "tendered." I will move to amend, so that it will read "made, secured, or tendered."

Mr. NOURSE. I think the Constitution of the United States has that language.

Mr. DELONG. I do not think it has the word "secured." The language of our Constitution is different from that of the Constitution of the United States in this respect. The Constitution of the United States reads: "Nor shall private property be taken for public use without just compensation"—and stops there. This Constitution, going on from that point, reads, "having been first made or secured." All that is additional to the language in the United States Constitution, and if we insist upon retaining that additional language, that altering the sense of the clause, I would suggest that it would be better to use the language "having been first made, secured, or tendered," so as to prevent any party from withholding the property until he obtains the security.

Mr. CHAPIN. I second that motion.

Mr. NOURSE. I think we had better amend it so as to make our Constitution, wherever we can, like a Constitution which has been already adjudicated authoritatively. I would like to strike out the words "having been made or secured," altogether.

Mr. BANKS. I would object very much to that amendment, because it has been decided in California that the security must be made before the transfer, and we know how improvements have been kept back by that decision. I hope that the idea suggested by the gentleman from Yuba, or rather the gentleman from Virginia, [a laugh] will prevail, and that we shall adopt the words "made, secured, or tendered," so that it will be held sufficient to either secure the compensation to a party, or to tender him compensation.

[Mr. COLLINS in the Chair.]

Mr. JOHNSON. We have already, in pursuance of the Enabling Act, adopted the Constitution of the United States. Now, the inquiry I am going to make is, whether it would not be an inconsistent act on our part to incorporate or to interpolate language in the Bill of Rights which is seemingly at variance with the language employed in the Constitution of the United States. If it imports anything more than the language contained in the Constitution of the United States, we have no right to place it there; if it means nothing more, then it is unnecessary. Therefore, my opinion is, that we should, in this relation, use simply the language contained in the Constitution of the United States. For that reason, I am adverse to the addition proposed by the amendment, and, even further, I am in favor of striking out the additional words already there, and leaving the language exactly as contained in the Constitution of the United States.

Mr. DELONG. I disagree with my friend,

the President in this. In passing that resolution adopting the Constitution of the United States, we did not adopt the Constitution of the United States as our Constitution. All we did by that act was simply this: we adopted it so far as to make it the paramount law of the land—so far as to signify our willingness that in case there should be anything in our Constitution which conflicts with the Constitution of the United States, then our Constitution shall yield, and the Constitution of the United States shall govern. But to say that we adopt it as our Constitution, would be incorrect. We have no right to adopt anything as all as our State Constitution, but only to prepare a Constitution to submit to the people. But that Constitution must not be at variance with the Constitution of the United States, which says that private property shall not be taken for public use without just compensation therefor. We can easily imagine a case, when in time of war or public peril, or even in time of peace, there may arise a necessity for the appropriation of private property for public purposes—a case which may happen unforeseen; as, for instance, the taking of building lots on the line of streets in a city, for the purpose of a public improvement, which would benefit not only the public, but even the owners themselves. The owners of such lots, conceiving that they had an advantage, might stubbornly refuse to sell without receiving an immense compensation, entirely inordinate in its amount. In such a case I think it would be a sufficient guarantee of the man's rights, if he would take such an advantage of the public necessities, to have the money—an amount sufficient to be a fair compensation—tendered to him. Then, if he refuses to accept the tender, what is the result? He brings his suit, or presents his bill for relief from the State, and the jury, or the Legislature, as the case may be, will assess and determine the value of the property, and if they find that it was tendered as much as it was worth, he will be obliged to take the money and pay all the costs; and if they find that the tender was too little, they will award him the additional amount, and the costs with it. I think there is more danger of an individual taking advantage of the Government when he has an opportunity, than of the Government taking advantage of an individual. I can see nothing in conflict with the language we propose to use, in the Constitution of the United States.

I think there is a case in Peters' Reports in which the same decision was made as has been made in California—that the compensation had to be made first, before the property could be taken. Now, if that is the case, how does it work? Why, public improvement is stopped—all work is stopped by some dog-in-the-manger, who cannot himself eat, and is bound not to let others eat if he can prevent it. He cannot eat the property, and he will not let the Government have it until they first make compensation. Now a tender is not compensation. Perhaps the Government agents and the owner cannot agree, and they have to condemn the property under the right called "eminent domain," which exists in the Government—the right to condemn property for public use in case an individual refuses to sell or give possession of it.

We had an illustration of this subject in California, in the case of the grounds around the State Prison. Estell and the old managers of that concern had succeeded in selling to the Government a tract of land encircled within an area of land owned by themselves, which they had reserved from the sale. They then built the walls of the prison partly on the Government property and partly on their own, and having got what they wanted, what did they do but set to work and enjoin the Government, and they refused to allow a thing to be done till compensation was first made. A tender of a reasonable amount did not relieve the matter, and everything had to be held in abeyance, until finally the State was compelled to submit to all the exactions of those men. Not a thing could be done upon the work until such time as a jury could assess and award the damages and those men were satisfied. I should not like to see the State of Nevada get into such a fix as that, and I think that when tender is made, if the party refuses to take it, the State should be allowed to go on and use the property the same as one man might that of another in certain cases. The party could then bring his action, if the case is that of a municipal corporation, or the like, or his claim before the Legislature for relief, if his property has been taken by the State, and then justice could be done.

Mr. NOURSE. It seems to me that the insertion of the word "tendered" will not remedy the fault which the gentleman seeks to remedy; if it is made to read, "made, secured, or tendered," then the question would be, what would be considered a good tender? Would it be sufficient to tender a certain amount for an unascertained debt? And if the tender is good before the amount is ascertained, then you could give security before the amount is ascertained. But my impression is that we cannot provide for giving security, nor for a tender, until the amount is ascertained to be tendered, or to be secured. I do not think we can improve the wording of the Constitution of the United States in this matter, upon which laws have been based, and upon which decisions have so often been rendered. I should rather trust to that wording than to make a new wording, and for that reason I am in favor of retaining the language as it is in the Constitution of the United States.

Mr. HAWLEY. I would merely remark, to use the language of common pleading, that the amendment offered by the gentleman from Storey, (Mr. DeLong), is, to say the least, vague, unintelligible, and uncertain. For if we provide that no property shall be taken for

public use unless just compensation has been first "made, tendered, or secured," we leave the question open as to who that tender is to be made by. That matter, I think, could more appropriately be attended to by the Legislature. The language proposed does not settle the question at all, and I think myself we could hardly employ any better language by which the Legislature is to be governed in this matter than that of the Constitution of the United States. Therefore, I hope that the words "having been first made or secured," will be stricken out, and I will move to add instead, these words:—

And the Legislature of the State of Nevada, at its first regular session, shall prescribe the means by and the terms on which private property shall be taken for public use.

Mr. NOURSE. I would like to hear that amendment again. If it covers the ground, I will accept it.

The SECRETARY read the amendment.

Mr. JOHNSON. From all I have heard, I am constrained still to entertain the same views which I have before presented to the Committee. Now, sir, I recognize the public necessity which exists, in many cases, for the taking of private property for public use. I know that instances of such necessity occur frequently in our Territory. But my objection goes further. As I before said, if this clause means more than the Constitution of the United States implies, we have no right to put it there. To us is not given the power of amending the Constitution of the United States; such is not the purpose for which we are convened. I repeat, that if the clause is meaningless, it is unnecessary to place it there. We ought not to cumber our fundamental law with meaningless and useless verbiage. My proposition is this, that if the Constitution of the United States does not give to the public authorities, municipal or State, the power of taking private property for their own use without first making compensation, then it is not competent for this Convention to interpolate words in the State Constitution which will give them the power of doing so by securing the payment of the valuation of such property. It is giving a judicial construction not intended. By interpolating these words in our Constitution, we assume authority which legitimately belongs to the judicial power. We have already declared that the Constitution of the United States is the supreme law of the land, and if it is paramount, as we have already enunciated, if it exceeds in jurisdictional power the Constitution we are proceeding to frame, then, unquestionably, whenever the question arises in the courts, they will have to give such construction as will conform with the Federal Constitution. If the Constitution of the United States conflicts with the Constitution of the State, the latter must yield. In that view I do conceive that the adoption of the amendment proposed, or of any of the amendments proposed, is entirely unnecessary and useless.

At some proper time, if no other member proposes the amendment, or if it is not already pending among the multifarious amendments now before the Committee, I will move to strike out that which follows the word "compensation," and leave the subject as we find it in the Constitution of the United States, thereby reserving it as a matter of judicial construction, as it undoubtedly must be, whatever words we may employ in this instrument. I hope all the amendments will be voted down, and that action will be taken by the Convention which will be consistent with its previous action—that we shall do nothing which is obviously in conflict with the Constitution of the United States.

The question was taken on the amendment proposed by Mr. Hawley, and it was not agreed to.

The question was next taken on the amendment offered by Mr. Nourse, and it was not agreed to.

Mr. NOURSE. I wish now to renew my motion to amend the section, by striking out the words "having been first made or secured," and all thereafter; making the provision exactly like that in the Constitution of the United States.

Mr. BANKS. I am convinced that we are compelled to take that course, much as I might desire to insert the other words here incorporated. I am satisfied it will be better to avoid litigation, by adopting the language of the Constitution of the United States, which has been passed upon in the State of California, the decision there being to the effect that compensation must be made before the citizen can be divested of his property right. That is to say that A, B, C, and all the rest of the twenty-six letters, can each of them hold on to his property until the compensation is made. Now suppose we in this Constitution say that if compensation is secured, that is sufficient—will not there then be clearly a conflict between the Constitution of the State of Nevada, and that of the United States? The latter would say that a citizen shall not be deprived of his property until a certain thing is done, and the former would say that he may be deprived of it, when something short of that thing is done. There will plainly be a conflict, and at the very least, the provision would be more injurious than beneficial.

Mr. DeLONG. The Constitution is inoperative of itself, until there is legislation; it looks to legislation. If, under such a Constitutional clause, the Legislature goes on and says that private property may be taken legitimately for public use, on the tender or payment of compensation, all the Supreme Court has to do is, to examine and see whether there is a conflict or not between the legislative enactment and the Constitutional provision. I think there is not. And I think we would be

placing a stumbling-block in our own way, if we were to say that a man should only be considered as compensated when the amount he demands is actually paid, although in many cases the party may refuse to take any price except an exorbitant one, and so the wheels of progress must stop. I think we can reach such a case, and it is important to do so, if we can. I would like to see it remedied right here.

The question was taken on the amendment offered by Mr. Nourse, and on a division, it was not agreed to,—ayes, 11; noes, 16.

No further amendment being proposed, the section was adopted.

FREEDOM OF SPEECH AND THE PRESS.

Section 9 was read, as follows:—

SEC. 9. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted or exonerated; and the jury shall have the right to determine the law and the fact.

Mr. NOURSE. I move to amend this section, by striking out that last clause—"and the jury shall have the right to determine the law and the fact." It strikes me as being the most absurd thing in the world, that twelve men, drawn from the different walks of life, should be empowered to determine nice questions of law. You might just as well set an attorney to mending a watch. By this absurd proposition, you take away the proper occupation of a Judge, and leave him merely to exercise the functions of a chairman of a town meeting.

The question was taken, and the amendment was agreed to.

There being no further amendment, the section was adopted.

Section 10 was read, as follows:—

SEC. 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

No amendment being offered, the section was adopted.

EQUAL PRIVILEGES AND IMMUNITIES.

Section 11 was read, as follows:—

SEC. 11. The Legislature shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all persons.

Mr. DELONG. I ask some gentleman who understands this section, to explain it. It is entirely new to me, although I have compared this Constitution with the Constitution of California. Let us consider it a moment—

The Legislature shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all persons.

I want to know if, under that provision, the Legislature can pass a toll-road franchise, or authorize the construction of a bridge, by certain parties, and then pass an act prohibiting other parties from building a road or bridge a certain distance from them? I think they cannot, under this section, and the consequence would be, that you could have none of those improvements. A man would have no guarantee that the moment his bridge is built, or his road completed, another bridge or road will not be constructed, right by his side. The provision is entirely new to me, and I confess that I do not understand its object. I move to strike out the section.

Mr. NOURSE. I understand that the object of the section is, to prevent such disgraceful proceedings as occurred in the last Legislature. (I hope, if there are any members of that body here, they will not take offence.) We then proceed to provide, by general laws, for the formation of corporations, and to establish the rights of corporations, instead of allowing the Legislature to grant special favors and valuable privileges to Tom, Dick, and Harry. I must say that I approve of the section. It may cut down the rights and privileges of the Legislature; I know it is open to that charge; but it is simply, as it seems to me, a prohibition of special legislation—that you shall not grant to John Smith and his associates, a charter to build a road here or there, but you may pass a general act, providing that persons who wish, may incorporate so and so, and thereupon, if you choose, may have the right of way across private property—may have the power to have it condemned to their own use by such course as may be prescribed by the Legislature; leaving the whole thing open to public competition, and not tied up to any right given specially, and irrevocably, to any favored corporation, like, for example, the Camden and Amboy Railroad in New Jersey. That is just such a monopoly as we desire to guard against here. I do not know as the section is drawn in the best manner, but I should be sorry to see our Constitution go out from our hands without some such clause contained in it.

Mr. BANKS. I should perfectly agree with the gentleman from Washoe, but for another, and more explicit section in this instrument, which is Section 20, of Article IV, in which are enumerated certain things, in relation to which the Legislature shall not pass local or special laws. It seems to be the intention to provide against this class of dangerous legislation in that section, and it occurs to me that if we adopt the section under consideration, we go too far, leaving it, perhaps, dangerously vague and indefinite. I think we had better leave this matter for Article IV, and in that, provide against just such things as we desire to exclude from special legislation. I hope the section will be stricken out.

Mr. DELONG. Section 1, of Article VIII, provides against the same class of laws which the gentleman speaks of. It says:—

The Legislature shall pass no special act in any manner relating to corporate powers, except for municipal

privileges, but corporations may be formed under general laws, and all such laws may, from time to time, be altered or repealed.

Now I submit that there is not a man in this room that can tell what this section, which we are considering, means. It is a section which cannot be found, word nor line, in the Constitution of California, and, I venture to say, in no other Constitution in the world. I do not know what it means. It says:—

The Legislature shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all persons.

I never knew or heard that they had passed any such acts, upon any such terms, except that when the franchise expired it should revert to the State. Those are the only terms I ever knew of. But this would seem to imply that franchises were to be bought, as they were in the days of Henry IV, when a valuable part of the State's rights was the sale of franchises.

Mr. NOURSE. I am willing to strike it out; I had not looked over those other clauses.

Mr. EARL. I think the section is designed to leave all these privileges and immunities equally open. For instance, if I desired to build a toll-road alongside of another, I have that privilege; or to place a ferry within a given distance of another ferry; or a store, if you please, alongside of another man's store. It is certainly a correct idea. We have seen in California the detriment of this special legislation. We there find that a ferry cannot be established within one mile of another ferry, nor a road within a certain distance of another road. Those things should be left equally open to competition, as we leave the competition of farm against farm, or merchant against merchant. We want roads, and bridges, and ferries, and we need not fear but that people will build them, if they are allowed to do so and there is a public necessity for them. No man will invest his capital unless he thinks it is going to be a good investment, and if there is already one good road made, he will not be so foolish as to build another alongside of it, and, if he does, the public will have the advantage of cheap tolls. I should regret very much to have the section stricken out. It seems to me clear in its meaning, and I think I can very readily understand it. It prohibits the Legislature from granting to one citizen or class of citizens privileges or immunities which are not equally open to all other citizens. That is, if one man is allowed to build a road or a bridge, another must be allowed to do the same. I, for one, want to see that section retained.

Mr. NOURSE. I only want to say that while my ideas in regard to such a provision remain unchanged, still, in my opinion, it is better to place it in that part of the Constitution which limits the powers of the Legislature; though I do not think there is anything now in that article which covers the ground. I shall vote to strike it out here, with a view to inserting it in its proper place.

Mr. DeLONG. We certainly do not want it in the Declaration of Rights.

Mr. BALL. If I recollect aright, this section was introduced in the old Convention at the time the Bill of Rights was reported, not knowing then what provision would be made in the subsequent articles of the Constitution. It was an inadvertence, I think, on the part of the Convention not to strike it out here, since it is provided for in other sections.

Mr. EARL. Now it strikes me that this provision is certainly in its proper place, among the declarations of rights. It is a right which I have, and you have, and every individual has, to make roads to travel on, or other improvements of a public nature. I think the provision is in the proper place, and if it is objectionable in its form, let gentlemen amend it. Now is the proper time.

Mr. JOHNSON. I well remember the circumstances under which this section was introduced. It was offered by a very worthy gentleman, now up more, who found it, I believe, incorporated in the Constitution of Kansas, and thought there was some merit in it. I refer to Judge Ralston. He was one of a committee of which I had the honor to be Chairman, and the provision was the subject of considerable discussion in committee, and finally it was acceded to by the other members, in order to make the report unanimous. It was introduced, and it was deemed to have sufficient merit to receive the indorsement of the Convention at a time anterior to the action of the committee to which had been intrusted the subject matter of incorporations, and long before any action of the Convention on that subject matter. It will be found, I think, by referring to the article in relation to corporations, that there is matter sufficiently prohibitory in that article to guard against the evils which the gentleman has foreshadowed, even if we strike out the section now under consideration. The prohibitory matter which I refer to will be found in Section 1 of that Article, which I believe has already been read. It says:—

Sec. 1. The Legislature shall pass no special act in any manner relating to corporate powers, except for municipal purposes; but corporations may be formed under general laws; and all such laws may, from time to time, be altered or repealed.

This section, coupled with the other provisions in Article IV, the guards and restrictions which are thrown around the Legislative Department, cover, I think, the entire ground. It may be said, perhaps, that I am anticipating the action of the Convention, in foreshadowing what may be their wish as to continuing these restrictions and guards which the old Convention deemed it necessary to incorporate in the Constitution; but, be that as it may, we have it in our power to retain those beneficial provisions relating to the Legislative Department, as well as that which I have read, contained in

the Article on Corporations, and these, I am sure, will prevent all the evils of which gentlemen seem to be so apprehensive.

Now, sir, I defy any two gentlemen upon the floor of this Convention to give constructions to this section under consideration which shall completely agree. I do not think any two gentlemen here can possibly agree in opinion as to what it means. I want nothing of that kind in our Constitution. I want nothing that is not susceptible of plain construction; nothing that is not to be comprehended by the most ordinary mind; and I am sure that the retention of this section will give rise to controversy and discussion to an extent which we cannot now anticipate, except that we can clearly foresee that it will be a troublesome question for the courts. All the restrictions necessary to guard against the evils of special legislation are found subsequently in this instrument, and if the Convention will do what accords with my judgment, they will retain those beneficial provisions, and thus avoid the evils apprehended from special legislation; but we might work a great injury and detriment to works of internal improvement, to railroad enterprises, if you please, if we should incorporate this section in our Constitution, coupled with that which is contained in the article in relation to corporations. The section in that article which I have read goes as far, I conceive, as any people in this progressive age ought to be willing to go in restricting the powers and operations of corporations. No power is given, but on the contrary, it is inhibited to the Legislature to grant special corporate powers, except for municipal purposes; but by general enactments, provisions for the formation of corporations may be placed upon the statute book, granting rights and privileges to one as well as to another. Under such enactments, all persons will have the privilege of availing themselves alike of those provisions of law. That, I conceive, is quite far enough for us to go. Certainly it is too far to go, to incorporate in this, our fundamental law, language in the construction of which no two gentlemen in the Convention can be found to agree. This uncertainty of construction of itself would be a sufficient reason to induce me to vote in favor of striking out the section.

Mr. BROSNAN. I regret very much that the state of my health will prevent me from saying anything *in extenso* upon this subject. I do not agree with some of the gentlemen who have spoken, certainly not with my friend who has just taken his seat, in regard to this section. In the first place, this subject is not provided for elsewhere as it is in the section before us. The section in relation to corporate powers which has been read, applies only to corporations, and this was inserted, I take it, *ex industria*, to prevent special legislation, or to prevent the passage of acts giving to individuals, powers and privileges individually, which they might exercise for a time themselves and afterwards transfer to associates, thus evading, if you please, that which is secured by the provisions of the article touching municipal and other corporations, as contained in Section 1, of that Article; and also the provisions in Section 20 of the Article on the legislative department. I think it would be well enough to retain those articles, but they do not cover the whole ground. In these, we should observe, are express cases, and the rule *expressio unius est exclusio alterius*, would apply. Inasmuch as a recital of acts prohibited is made, of course it is to be understood that acts not prohibited from special legislation in that recital are permitted. I think the intention is to guard against the formation of large monopolies like that which has grown up in California in connection with navigation, and it would make no difference whether the power were given to one man, or granted to a large corporation. In my opinion it does not harm the Constitution to have the section there, although I think the language does not, with sufficient clearness, express what is meant. If you strike out the words "class of citizens," I think it would be better. It would then provide that no one citizen should have privileges or immunities to which no other citizen is entitled. The provision, as I before remarked, was put there *ex industria*, to guard against special legislation.

Mr. EARL. I stand where I did before on this question, because I have seen the fruits of granting privileges to these great monopolies. It is true, there have been some isolated instances, where monopolies have been a benefit. Where a country is new, and the development of enterprises of a public nature is much needed, it may be unwise to have a clause of this kind enforced in all cases; but, certainly, I think the provision, as a general thing, is a wise one, and if gentlemen do not understand this language, they can amend it. Gentlemen say that the prohibition comes in hereafter, where the matter of special legislation is regulated, and I think there can be no objection to that, but this is among the rights which we wish to assert; and I, for one, want it to remain there, and hope it will not be stricken out.

The question was taken on the motion to strike out the section, and on a division, it was agreed to—ayes, 18; noes, not counted.

Mr. BROSNAN. I give notice, that when we get into Convention, I shall move to reinstate this section.

Section 12 was read, as follows:—

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be maintained by this State in time of peace, and in time of war no appropriation for a standing army shall be for a longer time than two years.

No amendment being offered, the section was adopted.

Section 13 was read, as follows:—

SEC. 13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner to be prescribed by law.

No amendment being offered, the section was adopted.

Section 14 was read, as follows:—

SEC. 14. Representation shall be apportioned according to population.

No amendment being offered, the section was adopted.

Section 15 was read, as follows:—

SEC. 15. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for payment of any debts or liabilities hereafter contracted; and there shall be no imprisonment for debt, except in case of fraud, and no person shall be imprisoned for a militia fine in time of peace.

No amendment being offered, the section was adopted.

Section 16 was read, as follows:—

SEC. 16. No bill of attainder, ex-post facto law, or law impairing the obligation of contracts, shall ever be passed.

No amendment being offered, the section was adopted.

Section 17 was read, as follows:—

SEC. 17. Foreigners who are or who may hereafter become bona fide residents of this State, shall enjoy the same rights, in respect to the possession, enjoyment, and inheritance of property, as native-born citizens.

No amendment being offered, the section was adopted.

PROHIBITION OF SLAVERY.

Section 18 was read, as follows:—

SEC. 18. Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.

Mr. JOHNSON. This, I believe, is the same language as is employed in the ordinance which we have adopted. I am in favor of the proposition; but is it not subject to the same objection which was raised against the section in relation to religious toleration? This section is, I think, in words identical with those embraced in the ordinance before the Convention, and I will call attention here to the language which there occurs, so that we may compare it with this section:—

That there shall be, in the said State of Nevada, neither slavery nor involuntary servitude, otherwise than for the punishment for crimes whereof the party shall have been duly convicted.

This section reads:—

Neither slavery nor involuntary servitude, unless for punishment of crimes, shall ever be tolerated in this State.

It is only a transposition, and the verbiage is almost identical. I do not see the necessity of having the same matter in two distinct portions of the Constitution.

Mr. NOURSE. Does the gentleman refer to the ordinance proposed by Congress? I like the wording of that better than this section, and I move that the wording of that clause be substituted for this section—that is, the substance of it. I like the language better than this, a good deal. Then it will read:—

There shall be in this State, neither slavery nor involuntary servitude, otherwise than for the punishment of crimes whereof the party shall have been duly convicted.

Mr. JOHNSON. I submit to the consideration of the Convention, whether the ordinance, although it is known by the name of an ordinance—being one of the terms and conditions under which we are authorized to form this Constitution—has not the same binding force and obligation as the Constitution itself? In other words, whether it does not become part and parcel of the Constitution when adopted?

Now, I think it will be found, by reference to the Constitution of Kansas, which State came in under the provisions of a law of Congress prescribing certain ordinances, that in the adoption of those ordinances they used language not materially differing from that which we find in this ordinance, and I believe it is not repeated in any other part of that Constitution. I submit, therefore, whether it is necessary, indeed, is it advisable for us to incorporate the same matter in the body of our Constitution which we have already adopted in an ordinance which becomes a part of the same Constitution? Now, I am in favor of the proposition which this section embodies, but I do not want it repeated. It is unnecessary so to do, since it has the same binding force in that ordinance as it would have if found in any other part of our fundamental law.

Mr. EARL. I may be wrong, it is true, but I understand that ordinance to be one thing, and our Constitution quite another. The Enabling Act provides how we are to get up a Constitution, and if we wish to prohibit slavery in our Constitution, I think it will do no hurt to have the prohibition in the instrument itself. Then, certainly, there can be no dispute about our having excluded slavery. It is true, we have adopted an ordinance to exclude slavery; but that only seems to anticipate a section of this kind in our Constitution, and I cannot see any harm in allowing the section to stand as it does.

Mr. BROSNAN. I call the attention of the Convention to Section 4 of the Enabling Act. It seems by that section that the ordinance cannot be revoked "without the consent of the United States and the people of said State" of Nevada. Now, this Constitution will undoubtedly provide for its own amendment, whenever it may be necessary to amend it, and unless we have retained this present section in some part of the Constitution, independent of the ordinance, we cannot well amend it. We cannot change the ordinance, but we might desire to put this prohibition in some different shape.

Mr. NOURSE. It is clear, to my mind, that the Enabling Act is not a part of the Constitution itself. It is simply to enable us to form a Constitution. It is a statement by the United States of the terms upon which we may go to work to form a Constitution. I should be exceedingly sorry, for one, to have a Constitution

ge forth from us which should be silent on this subject. I wish it to say something about it at least.

Mr. DeLONG. I agree with the gentleman; good things will bear repetition.

Mr. WARWICK. I wish to inquire whether the Enabling Act does not say to us that we shall engraft in our Constitution such a provision—whether it is not mandatory upon us to engraft in our Constitution this very provision, and in about the same form, substantially, as we see it here? Now, that Enabling Act simply says, as I understand it, that the people of Nevada shall adopt such and such provisions, and we are about to adopt this as one of those provisions. It is in the right place, and therefore I would like to see it adopted just as it stands, without any amendment whatever.

Mr. BANKS. So would I.

The question was taken on the amendment offered by Mr. Nourse, and it was not agreed to.

No other amendment being offered, the section was adopted.

Section 19 was read, as follows:—

Sec. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

No amendment being offered, the section was adopted.

TREASON.

Section 20 was read, as follows:—

Sec. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open Court.

Mr. DeLONG. I will make a motion to amend that section. The Constitution of California has, in addition to what is provided in ours, this language:—

No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open Court.

The Constitution of the United States says:

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open Court.

Now, whilst our Constitution defines what treason is, it does not, like the Constitution of the State of California, define how a person shall be convicted of treason. I think it would be safe to follow the rule adopted in California, with perhaps one exception. It says there, that "no person shall be convicted, except on the evidence of two witnesses to the same overt act." I would like to leave out the words "to the same overt act," so that it would read: "No person shall be convicted of treason, unless on the testimony of two witnesses, or on confession in open Court." I will move to amend by adding those words. I never could see the object of requiring two witnesses to the same overt act. Under that provision a party might commit treason and escape punishment for a lifetime. There might be a thousand witnesses, each one of whom could testify to the commission of some one overt act of treason, but it requires that there shall be two witnesses to the same act.

Mr. FITCH. I hope the amendment will not prevail. Neither the Constitution of the United States nor that of California has been found equal to the emergency which has come upon the country during the last four years. I think we should leave it to the Legislature to decide what is and what is not necessary to constitute evidence sufficient to convict a man of the crime of treason. I am in favor of leaving it for the Legislature to define.

Mr. BROSNAN. I would like to ascertain why there is a necessity of two witnesses to prove a man guilty of treason, when one witness would be competent to prove him guilty of murder. If the gentleman will answer that, possibly I will vote for his amendment.

Mr. STURTEVANT. In case a question of that kind should come up in Court, what would be the effect, if the attorney should appeal to the Constitution of the United States, and read that to the jury? It would be rather a stumbling-block to anything in the way of conviction, I should think. That says that there shall be two witnesses to the same overt act, in order to convict of treason, and it will be a hard matter, in my opinion, for the Legislature to make a law which will repeal the Constitution of the United States.

Mr. DeLONG. One answer is this—that the clause requiring two witnesses to the same overt act, applies only to treason against the United States. Now upon what basis, or by what rule, would you say that a person should be, or might be convicted of treason against the State of Nevada, upon the testimony of one witness, when it requires two witnesses to convict him of treason against the United States, or against any other State in the Union, the same clause being in the Bill of Rights, in every other State in the Union?

The gentleman from Storey, (Mr. Brosnan,) has asked me to give him my reasons for thinking that it should require two witnesses to convict a man of treason, while one is sufficient to convict him of murder. The only reason I can give him is simply this: that from the earliest time, down to the present, with the wise and good of every people and nation which have claimed civilization, the crime of treason has been ranked and considered as the most odious of all crimes which a man could be convicted of; and on account of its very odium, which, in all lands and nations prior to our own time, inflicted upon the subject the attainder of blood—for it was not only a conviction of the man convicted, but it attainted his blood, and the crime descended to his children, depriving them of the freedom of subjects, and the rights of citizenship—the laws have universally guarded, with special care, the rights and privileges of

the person accused of such an odious crime. From the very circumstance of the crime of treason being so regarded, it has been deemed necessary to require extraordinary proofs, to secure a conviction of that crime. That has been the rule in all civilized nations, and it is in order that we may not be looked upon as reformers and innovators in making such a change in regard to the rights and privileges of persons accused of so grave a crime, that I propose we should follow the beaten path which has been marked out, and recognized as proper and sufficient, by the wise men of every civilized nation.

As my colleague, (Mr. Fitch,) has said, the laws have been found insufficient to punish the crime in the United States; but the reason is, that it requires two witnesses to the same overt act, before a conviction can be had. It is very seldom that a man can be convicted, where the evidence of more than one person is required to the same act, and that has been the great stumbling-block in the way of convictions of treason. But had the clause read a little differently, I think there would have been no difficulty in convicting many of those villains and traitors, who, since this rebellion began, have been arrested, and released, for want of evidence. Now if we provide that they may be convicted by two witnesses, one of whom may have seen the party in one place committing an overt act, and the other in another place committing another overt act, there would be no difficulty in securing convictions. But from the fact that this is a crime which works not merely the swindler of blood, but works also the ruin of all concerned, pecuniarily and socially, as must be its effect if the crime is stamped upon them, as it will be, by public condemnation, after this war is passed, I think we should provide the additional safeguard of requiring two witnesses to convict of treason.

Mr. FITCH. Will the gentleman allow me to ask him a question? What does he mean by an overt act?

Mr. DeLONG. Well, sir, I will give the gentleman my understanding of it. It is an act committed in furtherance of the crime of treason.

Mr. FITCH. Does my colleague hold that a man can be tried and convicted of treason under this provision requiring two or more witnesses, unless each and every act, or the act constituting the crime of treason is proved?

Mr. DeLONG. I do not understand the question, but I hold this: The Constitution says that no person shall be convicted of the crime of treason except upon the testimony of two or more witnesses to the same overt act, and I say that under an indictment framed in the courts of the United States for treason, you could not convict a man by proving by one witness that he committed an overt act of treason here, and by another witness that he committed an overt act of treason there. You would have to prove by two witnesses the commission of the same overt act. And this has been the stumbling-block in the courts of the United States, which has prevented convictions of treason. That is my answer. I say, if you adopt the amendment which I propose, a man may be indicted for treason before the State Courts, and tried, and if two witnesses come forward and testify, one that he has committed treason in one place, and the other that he has committed treason in another, he may be convicted. That is all I am laboring for; to remove the stumbling-block.

Mr. FITCH. That is not my idea of an overt act: I understand that it is the crime charged itself; the act of treason.

Mr. DeLONG. I will endeavor to define more clearly my idea of what constitutes an overt act; it may be that I have too much of the Fourth of July left in me to make myself clearly understood. [Laughter.] It has been said by some that perhaps the South would have been justified in their rebellion if they had waited for Mr. Lincoln to commit some "overt act" against the rights of the South. Now, what does that mean? It means some act violative of a right. In that sense, and in that sense only, is it used in the Constitution. Inasmuch as treason consists in levying war against the United States, or giving aid and comfort to its enemies, if you give aid and comfort, or levy war, or proceed to do either, you commit an overt act of treason. That is what I understand to be the meaning of the term "overt act." Now, a person may do both. A person may give aid and comfort to the enemies of the Republic, and he may, besides aiding and comforting them, himself rise in arms against the Government. And you may not be able to prove by but one person that he rose in arms, and by one person that he gave aid and comfort. And what I propose is, that upon the evidence of those two facts, established by two witnesses, he may be convicted of treason. That is what I am laboring for. Does my colleague understand me?

Mr. FITCH. Yes; but I think, though, that the gentleman is wrong.

Mr. DeLONG. If the gentleman has got so that he understands me, I do not care what his opinions are.

Mr. FITCH. I may, perhaps, have a little of the Fourth of July left in me, too, inasmuch as I was not able readily to understand my colleague; but it seems to me that his conclusion bears about the same relation to his premises as did the wagon to the horse, in an illustration of a faulty argument, made, I think, by Tom Hood—when the horse ran away and went down the hill, getting detached from the wagon—it don't follow. If a man is indicted for treason, for murder, or for any other offense, he can only be tried at one time for one offense charged. For instance, John Smith is indicted for the murder of Peter Jones and William Hopkins, but he can only be tried for the murder of one of them. So in case of treason, the party can

only be tried for the overt act which is charged in the indictment, and that overt act is, therefore, the offense with which he is charged at that time.

Mr. DeLONG. Is not treason, like any other offense, a compound proceeding, made up of various acts, which may be alleged in an indictment? You may allege a felony, for example, but you may prove more than one act constituting that felony. So you charge treason, and then you go on to prove the various acts, which, taken together, constitute the crime of treason.

Mr. FITCH. No; for you cannot charge grand larceny and then go on to prove that the defendant stole one thing in one place and another thing in another place. So in case of indictment for treason, you must allege when and where the treasonable act was committed, and the prisoner cannot be tried for more than one act.

Mr. WARWICK. On a trial for treason, would not the prosecution be allowed to prove circumstances other than those laid in the indictment? For instance, hurrahing for Jeff. Davis at another time? Would not the prosecution be allowed to prove any single fact which would go to show or to substantiate the main charge?

Mr. FITCH. The prosecution might be allowed to prove that, for the sake of proving the *animus*, or as a part of the *res gestæ*; but they could not be permitted to produce testimony to prove that the defendant hurrahed for Jeff. Davis in Virginia, when in the indictment it is alleged that he did it in Carson.

Mr. DeLONG. Nobody pretends that.

Mr. FITCH. Well, my colleague is in favor of altering this section so as to read: "No person shall be convicted of treason, unless on the testimony of two witnesses, or on confession in open Court." Now, if he be convicted on the testimony of two witnesses of the overt act, then that overt act must be the crime with which he is charged, for you cannot try him on more than one charge at a time.

Mr. DeLONG. The difference between us is, that I understand that a man is to be indicted for treason, and not for any overt act, as levying war or aiding and assisting the enemy who are levying war. If the indictment charges that, it must be alleged by a separate count—that in the Territory of Nevada, in 1864, or at some other given date, the act of treason was committed, by levying war against the Federal Government, or giving aid and comfort, etc., by which overt act the accused committed the crime of treason. When you charge that in your indictment, then you will be allowed to prove either one of the charges, which are overt acts in themselves—either that the prisoner levied war, that he conspired with others to do it, or that he gave aid and comfort to those who did do it. Those overt acts, or as many of them as are proved, are compounded in the one term of treason when they are proved.

Mr. FITCH. I do not think that such an indictment would hold water. I believe the indictment would have to be particular in stating that at such a time, and at such a place, the defendant committed an act which constituted the crime of treason, and it would be necessary to prove that particular act.

Mr. TOZER. I wish to call these gentlemen to order. I do not think that any long-winded speeches in regard to the meaning of the term "overt act" will add one scintilla to the information of the Convention on the subject. I would like to see these long discussions brought to an end. Let us take a vote, and not spend our time listening to long harangues from those who seek to enlighten us, without effect.

Mr. NOURSE. At the risk of displeasing the gentleman from Storey who last spoke, I wish to say that the reason I think two witnesses are desirable in a case of treason is, that it is purely a political crime. It is more easy, perhaps, to indict a person and convict him of a conspiracy for treason in times of high political excitement than it should be. I know that now, as the saying is, the boot is on the other leg; but I have seen the time when the Administration flunkies talked lustily about us, who would not acknowledge the Dred Scott decision, and turn in to catch runaway darkeys, and threatened us with indictments for treason and all that sort of thing. Those times have changed now, but they may come again. I do not think we should be carried away by our desire to convict those who have been guilty of treason, and I do think that in a case of treason there is more necessity for two witnesses than there is in a case of murder, where, of course, man's minds are not so likely to be influenced by political or any undue excitement.

Now, in regard to this amendment, why should those words be left out here—"to the same overt act?" It seems to me there is no good reason for it whatever. I am very sure, as a matter of law, that the gentleman from Storey farthest from me, (Mr. Fitch,) is correct. Certainly, I think that an indictment charging that a man is guilty of treason, without specifying the act which constitutes the treason, would not, as the gentleman says, "hold water," and, to use a rather common expression, you could drive a six-horse coach through it. I think that an indictment for treason must charge, as an indictment for perjury or any other felony must, the time, place and circumstance. It must charge some "overt act," in contradistinction from the old doctrine of constructive treason. That is what it goes upon. The word "overt" comes from "*ouvert*," which simply means "open." And in old times, those familiar with the history of the law will recollect the case wherein a man was indicted for treason for wishing that the horns of a stag were in the belly of the king. Now, it is in contradistinction from that kind of doctrine, which was the doctrine of Great Britain at that time, that this doctrine was settled upon, that there should be no constructive treason, so that one man could no

readily charge another with a crime which was regarded as an infamous, at a time when there was so much disposition to pander to the ruling power—that is, to the king. It was provided in England, therefore, that there should be two witnesses to the same "overt act," which act must be alleged in the indictment to constitute treason, or else there could be no conviction. If we are to have any change at all, I should prefer that the section should be made to correspond with the provision on the same subject matter in the Constitution of the United States and the Constitution of the State of California.

Mr. DeLONG. Will the gentleman allow me to ask a question? Because, as I understand him, he must have misunderstood me. He says that my understanding was that an indictment for treason, drawn without specifying where and when the offence was committed, would be valid. I did not state that. I stated only that such indictment might contain a statement of more than one thing constituting the crime of treason, as, for instance, both that the party had levied war, and that he had aided and abetted others in doing the same thing, and that the proof might establish the crime of treason, if consistent with the indictment, on either count. Then, I say, that there might be a witness to prove that the party aided others, and also another witness to prove that he himself waged war.

The question was taken on the amendment proposed by Mr. DeLong, and on a division it was not agreed to—ayes, 10; noes, 16.

No further amendment being offered, the section was adopted.

Mr. DeLONG. I give notice that I shall insist on my amendment in the Convention.

Section 21 was read, as follows:—

SEC. 21. This enumeration of rights shall not be construed to impair or deny others retained by the people.

No amendment being offered, the section was adopted.

Mr. FITCH. As we have now passed through the article, I move that the Committee now rise and report it back to the Convention, with a recommendation that it be passed.

The question was taken and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article I, entitled Declaration of Rights; had made some amendments thereto, and had instructed him to report the same back to the Convention, with a recommendation that the article be passed, with the amendments.

The report was accepted, and the article was placed on the general file for a third reading.

RIGHT OF SUFFRAGE.

Mr. BANKS. I move that Article II, entitled Right of Suffrage, be read a second time by title and referred to the Committee of the Whole.

The motion was agreed to, and the article was read a second time by title and referred accordingly.

IN COMMITTEE OF THE WHOLE.

On motion of Mr. BANKS, the Convention resolved itself into a Committee of the Whole, (the President remaining in the Chair,) for the consideration of Article II, entitled Right of Suffrage.

The SECRETARY read Section 1, as follows:—

SECTION 1. Every white male citizen of the United States, (not laboring under the disabilities named in this Constitution,) of the age of twenty-one years and upwards, who shall have resided in the State six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now are or hereafter may be elected by the people, and upon all questions submitted to the electors at such election.

RESIDENCE OF VOTERS.

Mr. BANKS. I move to amend Section 1 of this article by adding the following:—

"This section shall not be so construed as to permit the exercise of the right of suffrage on the ground that the person proposing to vote started to come to this State six months or more from the time at which he proposes to cast his vote."

The members of the Convention are aware that there has been a construction put upon this constitutional provision, as it exists in the Constitution of California, by which persons are admitted to the right to vote who started to come to that State, or to go somewhere, six months previous to the election, notwithstanding that they may not have been in the State more than three days. The practice of allowing such men to exercise the privilege of voting, I believe, grew out of a decision or construction placed upon this clause by the Attorney General of the State of California. I do not know that that construction has ever received any judicial sanction, but I do know that very great abuses have grown up under that construction of the law. I hope, therefore, that we shall debar persons from the privilege of voting in our State, unless they can show that they have actually resided within our borders for the length of time prescribed. At any rate, I hope we shall define it, so that the question shall not arise at every election. At the election last fall, I knew of persons who had crossed the plains recently, and were too conscientious to exercise the right of suffrage, although they were told they might do so, while at the same time, no doubt, there were many others less conscientious—whose consciences sat more loosely upon them—who did exercise the right of suffrage, claiming it under that construction given by an Attorney General of California. I think, therefore, that we should construe this provision so as to require persons to actually reside here for the length of time prescribed, before they are entitled to vote.

Mr. DeLONG. A person must have a resi-

dence somewhere, I suppose, and it has been held, in all the States, that a person loses his residence immediately upon leaving the State. In the language of Chief Justice Marshall, a man cannot be made a human balloon, but he must be in some place all the time. Now, after a man leaves New York, he has not a right to exercise the right of franchise there, and I do not know where he should be permitted to exercise it, unless it is in the land to which he has emigrated. It strikes me that a person should not be disfranchised just for travelling from one place to another.

Mr. BANKS. Many persons leave a State, to go to some place or other, without having settled upon any place, in particular, to go to; and yet, because they happen to come here, and are landed on our shores, should we give them credit for residence for all the time since they left the State they came from?

Mr. DELONG. You must recollect that the party has to be sworn to the fact that he started at such a time with the bona fide intention of making this State his residence. If he is a man who would perjure himself, you cannot prevent him from doing so by a constitutional provision. He has to swear that he started within six months previous to the election, from the place of his former residence, with the bona fide intention of becoming a citizen here.

Mr. NOURSE. I cannot give my adhesion to such a mysterious doctrine as that. I think a man may lose his residence. If he chooses to make a caravan of himself, he does cease to be a citizen of the State he leaves, or of any State, though still a citizen of the United States. Here he is obliged to be thirty days in the district, and ten days, I suppose, before the election, in the precinct where he is to vote. Now he moves from Carson to Virginia within that time, and he has no right to vote in Virginia, although he has gone, bag and baggage, from Carson, and has no right to vote there. Should he be allowed to vote in Virginia, on the ground that he must vote somewhere? It seems to me it is very clear that a man may lose his right to vote, and that is one of the privations which a man must suffer, upon coming here, or upon travelling from any one place to any other. He must endure the deprivation of being denied the privilege of voting anywhere, until he gains a residence; and how a man can be said to have a right of residence, except by living in the State, passes my understanding.

Mr. COLLINS. I think the views taken by my friend and colleague, (Mr. DeLong,) certainly carry on their face a very great absurdity.

Mr. DELONG. Thank you.

Mr. COLLINS. I am glad the gentleman feels grateful. The idea that a man cannot lose his vote, is a monstrous absurdity, because men do lose their votes. Men, when they commit crime, lose their votes. In States where they have registry laws, if a man fails to "come to time" in getting his name registered, he will lose his vote. I might name a hundred cases, where a man may lose his right to vote, and it is the most absurd doctrine ever promulged, that because a man starts from New York six months previously, though he may have spent all the intervening time on the passage, yet, on his arrival, he may claim six months residence here. What is the object of requiring this residence? Why, that the man may become acquainted with the usages, customs, and wants of the people. That is the reason; and unless he resides here long enough to fulfil that requirement, it is the purest absurdity to exact any residence, in any case. A man might come into the Territory and know nothing about its people, its condition, its resources, or its wants, and yet, under this doctrine, he would be entitled to vote. Therefore, the remarks of the gentleman from Humboldt, (Mr. Banks,) are just in place, and some provision should be made here, by which those men, who are less scrupulous than others, coming here from the Eastern States, shall be prevented from claiming, under this sweeping provision, the right to vote, while the better, or more conscientious class, are kept away from the polls, leaving them to be controlled by the less conscientious class of men. I do hope that the amendment proposed by the gentleman from Humboldt, or some modification of it at least, will be adopted. I think, however, that the insertion of those four or five lines may be avoided, by simply amending the clause as it already stands, so as to read something like this:—"who shall actually have resided in the State six months," or, "who shall have personally resided in the State six months." I will move the first as an amendment to the amendment of the gentleman from Humboldt.

Mr. FRIZELL. It seems to me that the amendment would operate rather harshly upon a class of persons upon whom, certainly, we do not want to place any additional hardship. If we can readily give the right to vote at once to the overland emigrants who may settle in our State, I would rather be inclined to favor it. I will propose this amendment: to insert the word "actually" before "resided," so as to read, "who shall have actually resided in the State six months." I think the insertion of that one word is all-sufficient.

Mr. BANKS. It occurred to me to insert the word "actually" in that connection, and, if any qualifying word is to be inserted there, that is, no doubt, the word which should be selected; but upon reading it, it seems to me that the language is already so clear that there should be no possibility of misconstruction. How can a man reside in a State and not actually reside in it? How, by any possibility, the language could have been construed or understood as it has been construed, I cannot conceive. The language is, "who shall have resided in the State six months." Now, if I had been framing that section in the first instance, those are the very words I should wish to use. They seem to me perfectly plain and clear, and if we use the word "actually," I do not see that it strength-

ean the meaning at all. It seems to convey the same idea; and yet, as the language has been misconstrued, I think it desirable to place at the end of the words, language which shall be beyond the power of misconstruction. We must remember that it is not a question of literal meaning, but a question of construction. It is to avoid the difficulty arising from the possibility of misconstruction, and not on account of any want of appropriate words, that I add this proviso, so that the section shall be construed in a particular way—so that whatever the words actually mean, or whatever be their want of meaning, they must be construed so and so. I put it in that way in order that there may be no possible mistake as to our intention.

Mr. DeLONG. It seems that I am unsupported in my views by any member, and I should probably sink under the sarcasms of my colleague, (Mr. Collins), were it not that I am sustained by a greater man than either he or myself. I refer to the language of Chief Justice Story, of the Supreme Bench of the United States, and to that of the illustrious Marshall, to which I have often had occasion to refer, and more especially in the contested election case, so well known in California, of Doctor Duncombe, of Sacramento, where the whole question was fully and fairly considered. Justice Marshall, in the case cited, used that language, so preposterous to the gentleman from Washoe, (Mr. Nourse), that a man could not be a human balloon, but must be a citizen and resident of some place at all times. He is always a subject or citizen of some country. If the gentleman from Washoe thinks his view in that matter is right, I would ask him what he thinks would be the effect in the case of a draft, if a man had left Iowa six months ago? He is not, surely, a resident of Iowa; and if, in the meantime, a draft had been ordered, would he be subject to enrollment here and not there? If he owes allegiance and duty as a subject, in the sense of the word by which the subject and the alien are distinguished, he should be compelled to be enrolled and drafted in one place or the other; and if he is liable to be enrolled and drafted, why should he be deprived of the right of franchise? I think he should not, and I am surprised to hear my friend from Washoe taking a position which bears so severely upon this immigrant population when he claims himself to be one of that sort. [Laughter.] I am surprised at that. I think I have committed no offense whatever, when I have left California with the intention of becoming a resident of the State of Nevada; and I think most certainly, that I have committed no such offense in so doing as ought to deprive me of the right of the elective franchise. I am deprived of the privilege of voting there; why should I not vote here? Certainly I should have the right somewhere, because I am a native-born freeman, and citizen of the United States. I am a citizen over twenty-one years of age, and I am deprived of the privilege of voting by the common law which precludes me from voting anywhere but here. I think I should have the right, and gentlemen may insert "actually," or any other qualifying word, till they are blind, and yet, if we leave that clause to the examination of the Supreme Court, following the line of jurisprudence marked out by those greater lights which never will be dimmed, they will decide that a man is an actual resident here from the time he left home with a bona fide intention of taking up his residence here. They will decide that to be the construction, unless the provision suggested by the gentleman from Humboldt, (Mr. Banks,) is incorporated. "Actually" makes no difference, but if you wish to carry out those views and say that a man shall have been living within the limits of the Territory for six months previous, then you will have to adopt the other words which have been suggested. Otherwise the courts will say, as it has been decided in California and elsewhere, that the man has been an actual resident here, because he has been a resident nowhere else, and therefore, so far as exercising all the privileges which the laws give him is concerned, he is actually a resident here.

Mr. FITCH. The learned authority of Story and Marshall may suffice to prove that a man is a citizen, but it seems to me that though a man may be a citizen, still he may not be a voter. A man may be a citizen, and, notwithstanding, lose the right of suffrage; and it is not contemplated by this section to say that he is not a citizen until he has been an actual resident here for six months.

Mr. NOURSE. The gentleman from Storey, over the way, [Mr. DeLong] cites authorities with which I do not happen to be familiar. Chief Justice Story I do not know, but Chief Justice Marshall I have heard of. They claim that we must say that the party seeking to vote has actually "lived" in this State six months, in order to keep out this idea of constructive residence. Now, we do say "resided." Is there a distinction between "resided" and "lived?" If there is, it seems to me a distinction without a difference. I shall oppose the amendment for the simple reason that I do not like to attach to a clause of the Constitution other clauses explanatory of it. It seems to me that when we have put in the words "actually resided in the State six months," that means only one thing, and there can be no two constructions. The doctrine that a person who started from the East to come here has a right to date his residence here from the time he started is a doctrine of constructive residence, in contradistinction from the doctrine of actual residence which the amendment proposes to insert in the Constitution.

Mr. DeLONG. The Supreme Court of California have so decided.

Mr. NOURSE. So much the worse for the Supreme Court of California. I thank God we are not in the way of being controlled by the decisions of the Supreme Court of California.

Mr. FITCH. I think my colleague is mistaken; I think the question was never decided by the Supreme Court of California.

Mr. EARL. I hope we shall come to a vote, and let this discussion be ended.

Mr. WARWICK. Is it in order to offer an amendment at this time?

The CHAIRMAN. No, sir; there is an amendment now pending.

Mr. WARWICK. Will it be in order as a substitute.

The CHAIRMAN. No, sir; we have ruled them all out.

Mr. WARWICK. Will it be in order after the amendment is disposed of?

The CHAIRMAN. Certainly, if it is of a proper character.

The SECRETARY read the amendment proposed by Mr. Collins, to insert the word "actually" before the word "resided."

Mr. EARL. I hope that amendment will be voted down, as I do not think it strengthens the language.

The question was taken on the amendment, and on a division it was agreed to—ayes, 18; noes not counted.

The question recurred on the amendment offered by Mr. Banks.

Mr. WARWICK. I desire to offer a further amendment. I move to amend by inserting after the words "next preceding any election," the following:—

"Who shall have paid his State and Federal poll tax, and whose name shall have been registered in the district in which he is residing, by some person appointed by the County Commissioners, at least ten days previous to the election."

Now, sir, there are various reasons why this amendment should be adopted. In the first place, it would secure to the State its proper revenue; and, far above that, sir, it would assure the purity of the ballot-box. There is probably, no law that can possibly be enacted that would do more to secure the rights of the people of the new State, which I hope is about to be born, than this amendment which I here propose, and which involves the adoption of a registry law. It is well known to those who have had experience in the State of California, that from the fraudulent manner in which elections have been conducted there, men have been inducted into office, in the election of whom the people—that is, a majority of the respectable portion of the people—have had scarcely any voice whatever. It has been the desire of all good men there, who have reflected on the subject, to secure in some manner the purity of that palladium of our liberties, the ballot-box, beyond all peradventure, if such a thing is possible to be done. We have looked on every side for some ark of security, and the only thing which I can think of for effecting that purpose is the amendment which I have suggested, namely, the registration of voters, at least ten days before the election, in the district in which they reside.

Mr. BROSNAN. The gentleman will find the same thing provided for in Sec. 9 of this article.

Mr. WARWICK. I had not had an opportunity to examine this article; but, as I see it is provided for, I withdraw the amendment; and, as my friend here on my left, (Mr. DeLong,) suggests, I quietly subside. [Laughter.]

The question was taken on the amendment proposed by Mr. Banks, and it was not agreed to.

Mr. NOURSE. I wish to make one motion here, which I suppose will be voted down, but I will not occupy much time with it. I move to simply strike out the word "white," in the first line. I think it is pandering to an old and disgraceful prejudice—and none the less disgraceful, I will say, because I myself have partaken of it—against that race which is certainly doing grand work for the Union now. I suppose that here this is not in reality a practical question, and while I would not be in favor of the proposition in a population where there would be a great many of those ignorant people to turn loose at the polls, still I think here it is a mere theoretical matter. I offer the amendment, therefore, although I presume it will be voted down, simply because I think it my duty to do so.

The amendment was not seconded.

No further amendments being offered, the section was adopted.

Mr. DeLONG. As the time fixed for adjournment has nearly arrived, I move that the Committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration the subject referred to them, had made some progress therein, and had instructed him to ask leave so sit again.

The report was received, and leave was granted accordingly.

Mr. FITCH. I move that when the Convention adjourn, it adjourn to meet at seven o'clock this evening.

Mr. DeLONG. We cannot do it; we have a standing rule to the contrary.

Mr. FITCH. Oh, we rescinded all our rules, and adopted Jefferson's Manual only.

Mr. DeLONG. We only rescinded the rules of the Legislature, but the resolution fixing the hours of session was not rescinded, and that resolution, when adopted, became a standing rule of the House.

Mr. FITCH. Very well. Mr. President, I hereby give notice that to-morrow I will move to reconsider or rescind that resolution, so as to meet hereafter in the evening.

Mr. HAWLEY. I am informed that there is a young man in the house here, Master Ashim, who is studying phonography, and wishes to avail himself of facilities for practising the art here.

The PRESIDENT. I would suggest that there is another already here, Master Lewis.

Mr. FITCH. I do not suppose that any motion is necessary in regard to them; they can undoubtedly come in, and sit at the reporters' table with the others.

On motion of Mr. DeLONG, at five o'clock, P. M., the Convention adjourned.

FOURTH DAY.

CARSON, July 7, 1864.

The Convention met at nine o'clock, and was called to order by the President.

The roll was called, and twenty-nine members responded to their names; those who failed to respond being Messrs. Ball, Earl, Haines, Jones, McClinton, Morse, Parker, Sturtevant, Wellington, and Williams.

Prayer was offered by the Rev. Mr Nims.

The journal of yesterday was read and approved.

LIMITATION OF SPEECHES.

Mr. DUNNE offered the following resolution, which was read and adopted:—

Resolved, That no member of this Convention be allowed to speak more than twice upon any question pending, without a two-thirds leave of the Convention, if objection be made, and not longer than fifteen minutes at any one time, without a like consent of the Convention.

COMMITTEE ON ENGROSSMENT.

Mr. TOZER. I move that a committee of three be appointed on engrossment, whose duty it shall be to see that those articles which are adopted, from time to time, in Committee of the Whole, be properly engrossed for the consideration of the Convention. If I understand the ruling of the President correctly, this business now goes on the general file, and if it is allowed to pass over for several days without further action, the minds of members of the Convention are likely to become somewhat oblivious as to the condition of the several articles as they are passed. They should, therefore, be engrossed from day to day, or from time to time, to see that they are correct, and to prevent any confusion which might otherwise arise towards the close of the session, or, when, at a subsequent time, we take these matters again into consideration.

Mr. BANKS. I have no objection to the appointment of such a committee at this time, but does the gentleman contemplate the engrossing of these articles before they are ordered engrossed by the Convention? They are still open to amendment, until the question is taken on ordering them to be engrossed for a third reading.

The PRESIDENT. I presume they will all be ordered engrossed, but the Convention may, from time to time, consider an article as having been engrossed.

The question was taken, and the motion was agreed to.

The PRESIDENT subsequently appointed as such Committee on Engrossment, Messrs. Tozer, Frisell, and Crossman.

EVENING SESSION.

Mr. FITCH. In accordance with notice given yesterday, I move that the rule be reconsidered by which the Convention adopted the rule in respect to the hours of meeting and adjournment, with a view to offering an amendment, as follows:—

Resolved, That hereafter, the Convention meet daily at nine, A. M. and adjourn at twelve, M.; that it meet again at one, P. M., and adjourn at five, P. M.; that it meet again at seven, P. M., and adjourn at such time thereafter as a majority of the members may determine.

Mr. DeLONG raised a question of order, that the motion could not be entertained, because notice had not been given in writing, specifying the particular amendment to be made in the rules.

The PRESIDENT, after discussion, and frequent reference to Jefferson's Manual, sustained the point of order, but held that it would be in order to move to rescind the resolution referred to by Mr. Fitch.

Mr. FITCH moved to rescind the resolution.

Mr. DeLONG raised another question of order on this motion, and the subject was further discussed at considerable length.

Mr. BROSNAN moved to lay the whole matter on the table.

The question was taken on the latter motion, and upon a division, it was agreed to—ayes, 14; noes, 13.

JUDICIAL DEPARTMENT.

Mr. BROSNAN. I wish to make a motion for the appointment of a committee. I make it thus early, in order that, if the motion prevail, the committee it proposes to raise can be prepared to report as soon as the Convention shall reach, in its regular course, Article VI of the Constitution, entitled "Judicial Department." That article, in my judgment, will have to be materially changed, and perhaps it will be necessary to make copies of such report as the committee may agree upon, and have them ready for distribution among the members of the Convention. I therefore move that a committee of five be appointed by the President to report an article, or amendments to the article on the Judicial Department, and that the Committee be instructed to make their report by the time the Convention shall reach the consideration of that article in the regular course of proceeding.

Mr. BANKS. I hope the gentleman from Storey will so frame his resolution as to require the committee to report as soon as possible. If they can report before we reach that article, it will be an advantage to the Convention. For one, I should like the privilege of examining the report before it is to be acted upon.

Mr. BROSNAN. I have no objection to accepting any amendment to that effect.

Mr. BAKER. I move to amend the motion so as to instruct the committee to report "on or before" the time when Article VI shall be reached.

Mr. BROSNAN. Very well; I will accept that amendment, and in order that as many of the members of the bar here as practicable may have an opportunity to aid in preparing the report, and examining it before it reaches the Convention, I will further modify the motion so that the committee shall consist of seven members.

Mr. NOURSE. If the gentleman gets too many on the committee, I fear they will not be able to make rapid work.

The question was taken on Mr. Brosnan's motion as modified, and it was agreed to.

The PRESIDENT subsequently appointed as such Committee on the Judicial Department, Messrs. Brosnan, Nourse, DeLong, Collins, Dunne, Fitch, and Kennedy.

COMMITTEE ON ENROLLMENT.

Mr. DELONG. I move the appointment of a committee of five on enrollment. Of course, after we shall have passed the various articles, everything will have to be enrolled properly.

The question was taken, and the motion was agreed to.

The PRESIDENT subsequently appointed as such Committee on Enrollment, Messrs. Hawley, Gibson, Hovey, Mason, and Lockwood.

THE RULES.

Mr. WARWICK. I offer the following resolution:—

"*Resolved*, That the Standing Rules of the House of Representatives of the United States, as reported in Jefferson's Manual, be adopted for the government of this Convention."

Mr. FITCH. I move to lay the resolution on the table.

The question was taken on the motion to lay on the table, and, upon a division, it was agreed to—ayes, 13; noes, 7.

Mr. NOURSE. I propose the following resolution:—

"*Resolved*, That the term 'Jefferson's Manual,' shall be deemed to include the Rules of the House of Representatives of the United States, included within the book published under that title, no less than that portion of said book compiled from English Parliamentary practice."

This is a mere question of interpretation. There is a difficulty as to what shall be deemed and taken to be Jefferson's Manual, so far as our resolution adopting it refers to it, and I offer this resolution for the purpose of clearing away all doubt on the matter, that we may avoid these long discussions.

Mr. DUNNE raised a question of order on the resolution, that a proposition to the same effect had once been voted down to-day, and could not be renewed on the same day.

Mr. CROSMAN. I move that the matter go upon the table, with the balance of the propositions on the same subject.

The question was taken on the motion to lay on the table, and, upon a division, it was agreed to—ayes, 17; noes, 7.

COMMITTEE ON STATE SEAL, ETC.

Mr. CHAPIN. It occurs to me that there is another matter requiring some little labor, upon which a committee might very well be appointed. I therefore move that a committee of seven be appointed on a State Seal and Coat of Arms, in order that we may have that subject in readiness when we get to it.

The question was taken, and the motion was agreed to.

Subsequently the President appointed as such Committee on State Seal, etc., Messrs. Chapin, Warwick, Tagliabue, Earl, Wetherill, Folsom, and Hudson.

EVENING SESSIONS—AGAIN.

Mr. KENNEDY. I give notice, that, on to-morrow, I will move that the Convention hold evening sessions hereafter, commencing at seven o'clock.

Mr. DELONG. I move that that be laid on the table, too. [Laughter.]

Mr. BANKS. I move that when this House adjourn, it adjourn to meet at seven o'clock, this evening.

Mr. DELONG. Now that is really out of all order. [Laughter.]

Mr. NOURSE. I understand that that would dispense with the afternoon session.

Mr. BANKS. Not at all; we take only a recess at noon, and do not adjourn till five o'clock, under our rule.

Mr. DELONG. I rise to a question of order. The gentleman is amending a Standing Rule by a simple motion. There is no parliamentary authority for that.

The PRESIDENT, after some discussion, overruled the point of order.

Mr. NOURSE moved to lay the motion of Mr. Banks on the table.

The question was taken on the latter motion, and, upon a division, it was not agreed to—ayes, 11; noes, 15.

The question recurred on the motion of Mr. Banks.

Mr. NOURSE. I would ask whether a certificate from this body to those gentlemen who are making these motions, testifying to their extraordinary diligence, and that they are extremely anxious to get through in a short time, would not answer every purpose.

Mr. BANKS. I wish to say a word in reply to the insinuation of the gentleman from Washoe. Now, sir, I have been opposed to all the motions made here for the purpose of cutting off debate, and I never in my life voted for the previous question. I do not wish to curtail the time allowed to any gentleman in speaking upon any proposition before us; let every gentleman have a reasonable opportunity to present his views. But I am anxious that we may get through speedily, and get home to our legitimate business, and to that end I am willing to

work night and day. I do not see any reason why we should stand around the streets here, or spend our time in comparing views on general topics, as most of us perhaps will, unless we meet in the evening. I think we ought to attend to our duty during all the time we can possibly have, and by that means we can secure more thorough discussion, and, in consequence, a better Constitution.

Mr. COLLINS. The gentleman from Humboldt has discovered the thought in my own mind, and well expressed it. It occurs to me as being reasonable and proper that we should hold evening sessions. As a general thing, large deliberative bodies are divided up into committees, and the consequence is, that the evenings must be devoted to the meetings of those committees; but here we have no committees, save two or three, which were appointed this morning; and the report of one of these committees is, I believe, already drafted. It becomes, therefore, a binding obligation upon us to hold evening sessions, and I hope the motion will prevail.

Mr. TOZER. The action of the Convention, on the first day—or rather, the second day, the first being Independence Day—has done away with most of the labor which usually and necessarily devolves upon a Convention of this kind,—I mean, the long and laborious work of framing and preparing a Constitution, every part of which shall be suited to all the other parts. That labor has been almost wholly done away with, by the action of the Convention in adopting the Constitution which was prepared, after great labor and long deliberation, by the former Convention. Nevertheless, the tedium, or the labor of going through with the work of this former Convention, section by section, carefully looking over and criticising each provision, necessarily devolves upon us, and that labor will, of course, take some time; but it can just as well be performed by lengthening out our sessions into the evenings, as not. For one, I am anxious to finish our labors, and get away as soon as possible, and therefore I hope the motion will prevail, and that we shall sit an hour or two, if not a longer time, every evening.

Mr. FITCH. I move the previous question.

Mr. CROSMAN. I wish to ask a question, for information as to the operation of this motion. It is, that when we adjourn, we adjourn to meet in the evening—I wish to know whether that will cut off the afternoon session.

Mr. BANKS. No, sir.

Mr. LOCKWOOD. I am opposed to evening sessions generally, but I observe a little notice in a Virginia paper here, which says that the Storey delegation are endeavoring to expedite matters, and rather intimating that the Ormsby delegation are opposing them in that laudable purpose. For that reason, I shall vote for the motion.

The PRESIDENT. This discussion is all out of order, the previous question having been moved and seconded.

Mr. DELONG raised a question of order, that the demand for the previous question had not been seconded.

The PRESIDENT, after some discussion, overruled the point of order.

The question was taken—"Shall the main question be now put?"—and, on a division, the vote was—ayes, 10; noes, 13.

So the demand for the previous question was not sustained.

Mr. DELONG raised a question of order, that the motion of Mr. Banks—that when the Convention adjourn, it adjourn till seven o'clock in the evening—could not be entertained, as such a motion could only be made for an adjournment to a particular day.

The PRESIDENT overruled the point of order, holding that though it might involve a change of the rules, there was nothing to prevent the motion from being made at any time.

Mr. NOURSE appealed from the decision of the Chair.

The point of order was discussed by Messrs. Nourse, Fitch, Collins, Warwick, and DeLong.

The question was taken—"Shall the decision of the Chair stand as the judgment of the Convention?"—and the vote being in the affirmative, the decision of the Chair was sustained.

Mr. EARL. It seems to me that this lengthy discussion has all been upon a mere quibble. If we want to change the rule, we can do it, as the President has decided, by a majority vote; and why not offer a simple resolution to have night sessions, vote upon it, and then go to work.

Mr. BANKS. I have no objection at all to the change proposed, but it occurs to me that there is some misapprehension in regard to the force of the rule concerning adjournments. It is necessary to have a previous resolution to fix the time of meeting after the adjournment, because, otherwise, when the hour for adjournment arrives, we should stand adjourned till the next day. If the gentleman from Storey desires to substitute the word "recess," for "adjourn," I have no objection.

Mr. CRAWFORD. We have consumed a great deal of time on this question without arriving at any definite result, and now, for the purpose of settling the matter, I propose this as a substitute for the motion of the gentleman from Humboldt:—

Resolved, That when the hour of five o'clock arrives, this Convention will take a recess until seven o'clock this evening.

Mr. DELONG. It strikes me that that would be a broad-faced farce, after the decision of the Chair, which has just been sustained.

The PRESIDENT. The Chair will rule the substitute out of order.

Mr. NOURSE. I move to amend the motion of the gentleman from Humboldt, by adding the words, "and continue in session, day and night, without ceasing, until a Constitution shall be produced." [Laughter.]

The PRESIDENT. The Chair rules that out of order.

Mr. NOURSE. I appeal from the decision of the Chair, for the purpose of stating the reason why I offered it, because I know it may look like a burlesque.

The PRESIDENT. The gentleman can only state the grounds of his appeal.

Mr. NOURSE. My grounds are, that an amendment to a resolution is always in order, if it is respectful in its character, and refers to reason, and is reasonable. [Merriment.] Now I wish to state that I offered the amendment seriously. Why I oppose night sessions, and why I took part in the fillibustering which has been going on here, was not that I wished to exhaust the time, but I, for one, would be physically unable to endure night sessions. It is very exhausting labor in which we are engaged. It calls for the exercise of all the higher mental faculties. And I find myself, after seven hours of such mental and physical exertion, completely exhausted. That is the reason, and no other, why I oppose the resolution; not because I am not willing to work as hard as anybody, within reasonable bounds, but because I find that time is not gained, but rather is lost, by attempting to do too much, and working too many hours. Now having stated my reasons, I withdraw the appeal and my amendment also.

Mr. WARWICK. I move that the subject be indefinitely postponed.

The question was taken, and, upon a division, the motion was not agreed to—ayes, 11; noes, 15.

Mr. DELONG. I move that the resolution of the gentleman from Humboldt (Mr. Banks) be made the special order for to-morrow.

Mr. TOZER. I move that that motion be indefinitely postponed.

Mr. WARWICK. I move that it be laid on the table.

Mr. FITCH. That would carry the whole subject to the table.

Mr. WARWICK. I call the gentleman to order; the motion to lay on the table is not debatable.

The question was taken on the motion to lay on the table, and it was not agreed to.

The question was stated on Mr. Tozer's motion to indefinitely postpone.

Mr. BANKS. I hope that will be withdrawn. The effect will be, of course, to indefinitely postpone the whole matter, and I am sure the gentleman does not want to do that.

Mr. TOZER. We have consumed nearly, if not quite a whole hour, on this matter, and if my motion to indefinitely postpone will have the effect of getting rid of the subject in some way, I shall be glad to see it carried.

The question was taken on the motion to indefinitely postpone, and, upon a division, it was not agreed to—ayes, 9; noes, 14.

The question was taken on Mr. DeLong's motion to make the motion of Mr. Banks the special order for to-morrow, and it was not agreed to.

The question was then taken on Mr. Banks' motion, and it was agreed to.

Mr. DELONG. I voted with the majority, and I give notice of a motion to reconsider. [Laughter.]

Mr. CHAPIN. I trust that my colleague will be allowed to waste as much time as he pleases, now; we have consumed nearly two hours already, to-day, and accomplished scarcely anything.

The PRESIDENT. The gentleman is not in order; there is nothing before the Convention.

Mr. CHAPIN. I rise, not to a question of order, but to a question of business.

The PRESIDENT. Business does not seem to be before the Convention this morning. [Laughter.]

Mr. TOZER. I rise to make a motion. It is, that my colleague on my left, (Mr. DeLong,) be furnished with a large copy of Jefferson's Manual and a small room adjacent to this, so that he can practice by himself. [Great laughter.]

ORDER OF BUSINESS.

Mr. FITCH. I suggest that we take up the general file, and dispose of Article I, which was reported from Committee of the Whole yesterday, and then go into Committee of the Whole on Article II.

Mr. DELONG. Is that the order of business—the general file?

The PRESIDENT. No; it is the last in the order of business. The order is the second reading and reference of resolutions, and under that we can refer any matters to the Committee of the Whole.

Mr. DELONG. Then if we go into Committee of the Whole, we should never reach the general file.

The PRESIDENT. The Secretary informs me that the general file should have preceded the eighth order of business, and I think it would be better than to make it last, as has been done. If it is the desire of the Convention, the order of business can be changed.

Mr. DUNNE. I move to change the order of business, so that the general file shall be the eighth on the list.

The question was taken, and the motion was agreed to.

DECLARATION OF RIGHTS.

The PRESIDENT. Business on the general file is now in order, the question being on the engrossment of Article I, entitled Declaration of Rights.

Mr. HAWLEY. The committees on Enrollment and Engrossment should be authorized to employ clerical labor, at so much per folio. I am under the impression that that course will be found to save expense, secure the performance of the labor, and be the most satisfactory to the Convention; but, no arrangements having yet been made, if that article is passed to engrossment, the committee will be at a standstill.

Mr. DeLONG. The Convention generally disagrees with me on questions of order, I know; but I suggest that a bill is only engrossed before it is passed, and enrolled afterwards. The object of engrossing is to get it quite correct before we pass it, and then, after its passage, we enroll it.

The PRESIDENT. The gentleman is correct, but it may be considered engrossed.

Mr. BANKS. The question comes, without any motion, upon the engrossment of the Article.

Mr. FITCH. I move that the Article be considered engrossed, and placed upon its third reading and final passage.

Mr. HAWLEY. I suggest whether, in view of the fact that certain amendments were made in the Article, it should not be actually engrossed before we pass it, and let the Engrossing Committee report upon it regularly. I think that is the best policy.

Mr. DeLONG. I hope it will be engrossed. Is the Convention willing to consider a confused lot of amendments, pasted on, interlined in pencil, and every way, as having been engrossed, and pass the article in that shape? Especially in so serious a matter as a fundamental law, the bill should certainly first be engrossed plainly, and compared by the regular committee. I know it is the practice sometimes in legislative bodies to consider bills engrossed, but I should certainly desire, in so important a matter, to have a committee examine and report upon it, before its final passage.

Mr. WARWICK. As we are now about organizing a State Government, I shall object, in every instance, to considering anything engrossed.

Mr. FITCH. I withdraw the motion.

Mr. BANKS. Now I submit that the question is on the engrossment, without any motion.

The PRESIDENT. That is the question.

ENGROSSMENT.

Mr. HAWLEY. The Committee will find themselves at a loss, and the Secretary of the Convention will find no one to whom he can hand the document to be engrossed, because no provision has been made for engrossing. I will make a motion that the Committee on Engrossment be authorized to employ clerical labor, at thirty cents per folio, for the purpose of having properly engrossed the Resolution Ordinance, Preamble, and Article I of the Constitution.

The PRESIDENT. That motion cannot be entertained without a suspension of the order of business.

Mr. HAWLEY. Very well; I move that the rules be suspended, in order to get the motion before the Convention.

The PRESIDENT. In order that the Convention may understand what has already been done, the Secretary will read that portion of the report of the Committee on Officers and Salaries, adopted on the second day of the session, which has reference to this subject.

The SECRETARY read, as follows:—

To the President and Members of the Constitutional Convention: Your Committee on Subordinate Officers and Compensation beg leave to report: That in view of a short session, they deem it advisable that an assistant Secretary be employed, and that enrolling and engrossing clerks be specially appointed, when they may be needed, at the close of the session.

The question was taken on the motion to suspend the rules, and it was agreed to.

Mr. TOZER. I have prepared a resolution which, with the leave of the gentleman from Douglas, I will offer.

Mr. HAWLEY. Very well.

The SECRETARY read Mr. Tozer's resolution, as follows:—

Resolved, That the committees on Engrossment and Enrollment are hereby authorized and empowered to appoint a clerk to each of said committees respectively, at a salary to be fixed by the said committees, and the payment to be provided for as the salaries of other officers and attaches of the Convention.

Mr. NOURSE. I do not think that is the best way. I think the best way would be for the committees to employ the clerks as they find they need them. I do not fancy having clerks on salaries, who would be half the time idle. There is plenty who are idle now. Let them put the compensation at a reasonable figure, and employ no more than is necessary.

Mr. TOZER. Nothing can be more necessary than to employ clerical labor, to enable us to get through our business.

Mr. NOURSE. I oppose the appointment of a standing clerk for each committee.

Mr. HAWLEY. I suggest that the resolution be amended so as to authorize each committee to employ a clerk, at such price per folio as they may fix upon, to perform the necessary labor.

Mr. NOURSE. I suggest that it be made to read, that they procure such writing as is necessary to be done.

Mr. TOZER. I understand that some writing must be done every day, and the committees cannot very well run off, upon the spur of the moment, and find the man that will do the work cheapest. We must have somebody all the while, at two, three, four, or five dollars a day, or at so much a folio, to be here all the while, ready to do the work. The committees can make the compensation so much a folio.

Mr. HAWLEY. I believe in employing competent clerks and paying them well. I will offer no amendment.

Mr. BROSNAN. I move, as an amendment, to insert after "salary" the words "not to exceed ten cents a folio." He is a poor clerk who cannot write more than one hundred and fifty folios a day.

Mr. PROCTOR. But the enrolling, at least, must be done very nicely.

Mr. TOZER. I think the sum named is too small, altogether.

Mr. NOURSE. It appears to me that twenty cents a folio would be about right.

Mr. CHAPIN. The enrolling cannot be done

at any such price; it must be done with the greatest care and skill. As for the engrossing, however, I do not see the necessity. Here we have made only slight amendments to Article I, and why not let the committee examine that and see that it is all correct, without engrossing it. If, in any case, there are extensive alterations, let them procure a clerk to do the work, and pay him what it is worth. I hope it will be left in the hands of the committees; in that way they can avoid a great deal of expense.

Mr. HAWLEY. I understand the lowest price paid here for any official copying is twenty-five cents per folio; it was formerly thirty-five cents.

Mr. CHAPIN. I am just informed, by the clerk of the former Convention, that the bill of the engrossing clerk last year was $580. And I am glad to have from him an expression on the subject—he tells me that there is no necessity for that expense whatever. I am fully satisfied that the expense may be avoided if we leave the subject with the committee, after this expression of the sense of the Convention on the subject.

Mr. BANKS. I have seen so many serious errors committed in much less important matters than a State Constitution, that I am inclined to insist that we should have all these matters presented to us in a clear and connected form, as they only can be presented by an engrossment. Gentlemen will remember that in the last Convention there were engrossment and re-engrossment, but in this Convention I think there will be no such bill as five hundred dollars. In order that we may have our proceedings correctly filed away, in such a form that there can be no mistake about them, in view of the importance of the work we are engaged upon, I do insist that we go through with all the regular parliamentary practices and formalities, which are designed for securing safety. Let us have the whole Constitution engrossed, so that our engrossed and enrolled bills can all be filed away in such a condition as to leave no doubt in regard to what our action may have been. I know that when the late amendments to the Constitution of California were passed by the Legislature of 1862, there were some careless proceedings, the result of which was that it required the expenditure of a large amount of money in the employment of experts, and the sending off of committees, to find what the Legislature of 1862 had really done. And even to this day, I defy any person to determine, with any degree of certainty, just what that Legislature did enact, in regard to amending the Constitution of California. I hope that, in our desire to save a little by doing without engrossment, we shall not run upon any snag of that kind.

Mr. TOZER. I believe that the Engrossing Committee is entirely competent to take supervision of this matter, and see that the amendments made are all properly engrossed and correctly presented for the subsequent action of the Convention. I wish to avoid all unnecessary expense, but, at the same time, let us employ such clerical labor as may be required, at a fair, reasonable price—not an exorbitant price—whether it amounts to one, two, or five hundred dollars.

The PRESIDENT. At thirty cents per folio, the engrossing of the whole Constitution would amount to about six hundred dollars, but I presume the Committee would have the power to direct the engrossment of such parts only as may be amended.

Mr. CHAPIN. Yes, sir; we shall depend, mainly, on the enrolled copy, and examine that more critically.

Mr. BANKS. Suppose that is wrong?

Mr. CHAPIN. Then make it right.

Mr. BANKS. Why, Mr. President, it is passed, then; we want to examine it critically, while we have still power and opportunity to correct it.

Mr. CROSMAN. The proposition now before us leaves it all to the discretion of the committees, and I hope the Convention will leave it with them, and let them employ such clerical labor as they need. The presumption is that they will not employ more than is absolutely required. I call for the question on the adoption of the resolution.

The resolution was again read.

Mr. CHAPIN. I move to amend the resolution, by striking out the word "salary," and inserting the word "compensation."

Mr. TOZER. I accept the amendment.

The question was taken on the adoption of the resolution, as modified, and it was adopted.

The PRESIDENT. The question now is on ordering these several matters to be engrossed for a third reading—the Resolution, Ordinance, Preamble, and Article I of the Constitution.

Mr. CROSMAN. I suggest that they be read by title, and referred to the Committee on Engrossment.

Mr. HAWLEY. I suggest that they be arranged in the following order: The Preamble, the Resolution, the Ordinance, and the Article.

The PRESIDENT. That can be decided upon hereafter.

Mr. BANKS. It occurs to me that we had better settle the order now. I think our Enabling Act—I am not quite clear upon that point—requires that the first thing we do, after our organization, should be the adoption of that resolution which was proposed and passed on the first or second day of the session, and therefore I think that should come first, or before the preamble, and I will move that it have that position.

The PRESIDENT. I suppose, in the absence of instructions, the Committee on Engrossment could arrange it as they please.

Mr. BANKS. In order to settle any question of doubt, I will move, further, that the ordinance be placed next in the list, over the preamble.

Mr. CHAPIN. It occurs to me that we shall find it necessary many times before we get through to discuss this matter of arrangement, and I think it would be well now, or at some other time, to appoint a Committee on Arrangement.

Mr. BANKS. With that understanding, I am very willing to withdraw my motion.

The PRESIDENT. We found it necessary in the old Convention to appoint a committee on the phraseology and arrangement of the different sections, and they were arranged and rearranged at different times. Parts of the Constitution, reported by a committee on one department, when they came to be acted upon, were sometimes discovered not to be in the proper place, and were therefore transferred to another department. The appointment of such a committee is doubtless the most feasible way of disposing of the matter.

The question was taken en masse (by general consent,) on ordering the Resolution, Ordinance, Preamble, and Article I, to be engrossed for a third reading, and decided in the affirmative.

Accordingly, the resolution adopting the Constitution of the United States, the ordinance concerning slavery and other matters, the preamble, and Article I of the Constitution, entitled Declaration of Rights, were severally read by title, ordered engrossed, and referred to the Committee on Engrossment.

RIGHT OF SUFFRAGE.

Mr. FITCH moved that the Convention resolve itself into a Committee of the Whole, for the further consideration of Article II, entitled Right of Suffrage.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. Fitch in the chair,) and resumed consideration of Article II, entitled Right of Suffrage.

The Committee proceeded to consider the Article by sections, commencing with Section 2, which had been reached when the Article was last under consideration in Committee.

DISFRANCHISEMENT OF REBELS.

Section 2 was read, as follows:—

SEC. 2. No person who has been or may be convicted of treason or felony, in any State or Territory of the United States, unless restored to civil rights, and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government, and no idiot, insane, or disloyal person, shall be entitled to the privilege of an elector.

Mr. HOVEY. I offer the following as a substitute for the section:—

SEC. 2. No person who has been or may be convicted of treason or felony, in any State or Territory of the United States, unless restored to civil rights, and no idiot, insane or disloyal person, shall be entitled to the privilege of an elector.

Mr. DUNNE. I move to amend the substitute by striking out the words "or disloyal," in the last sentence, and inserting the word "or" before "insane," so that it will read:

And no idiot or insane person shall be entitled to the privilege of an elector.

Mr. WARWICK. If I understand the effect of the substitute now offered, it is to strike out from the section as it now stands that portion which reads as follows:—

And no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government.

The CHAIRMAN. Yes, sir.

Mr. WARWICK. I would respectfully inquire of the gentleman who offers that substitute, the reason for desiring to confer the privilege of the elective franchise upon such as have borne arms in this rebellion, for the purpose of destroying the government under which we live. I would ask the gentleman if he is not willing to await the action of the General Government in this matter hereafter, by an act of amnesty, pardon, or otherwise, or if he is willing that those who have raised their hands in treason against that Government, and endeavored to destroy its life, shall participate in the elective franchise among us—that when they are no longer able to bear arms against the Government they may be permitted to strike at it covertly, through the ballot-box, in order to accomplish that destruction which they have been unable to effect with arms in their hands. I can see no good reason for the substitute proposed; the section suits me as it stands, and I hope it will be adopted without amendment.

Mr. DUNNE. I rise to a point of order. I believe the gentleman is speaking to the substitute, while the question is on the amendment offered by myself. That amendment leaves in the portion which he is arguing ought not to be stricken out.

The CHAIRMAN. The gentleman is speaking, I understand, to the whole subject matter which is before the Committee.

Mr. WARWICK. I am willing to give way till the gentleman from Humboldt explains his amendment.

Mr. DUNNE. By permission of the gentleman from Lander, then, I will say that my amendment simply strikes out the word "disloyal." The effect, as distinguished from the substitute of the gentleman from Storey, (Mr. Hovey,) would be, that whereas the substitute would prevent all persons who have voluntarily borne arms from voting, unless an amnesty be granted, the striking out of the word "disloyal" alone, still leaving those words in, would allow those persons who may be pardoned under the amnesty proclamation, the right to vote; but it would, at the same time, prevent the man who has served as Colonel, or in any higher rank, in the army of the rebellion, (who are not in-

elected in the amnesty,) from voting, without the necessity, in order to preclude them, of their being convicted of treason. The fact of such men holding these positions would alone, under my amendment, prevent them from exercising the right of suffrage.

Mr. WARWICK. I oppose both the amendment and the substitute proposed. I can see no good reason why those who are now, or who have been, in the past, fighting with arms in their hands against the life of this Government, should be admitted to the privilege of the elective franchise in our new State. It is well known, sir, the thing is patent to every member here who has traveled this Territory, that it has been made the place of refuge for the scum and offscourings of the rebel States. Unable to bear arms longer against the Government, they have sought a refuge in our mountains and hills, and to-day many of them are scarcely able to restrain the treason with which they are filled to bursting in every pore. I have met them by the score in the county I have the honor to represent. Hundreds of rebels, open mouthed, are there, ready for any enterprise which is not too dangerous. Whole neighborhoods there, are infected with treason. Now, I ask if we are going to open the door to admit to the elective franchise men of that class, at the moment when we are forming a new State? For what reason are we to become a State? To add strength to, and not to weaken, the General Government. We are to be the first State of that chain of States which is hereafter to connect the Western borders of the Republic with the East. It is well known that our Territory is so large, and our population so sparse and so little organized, that this is the place sought out already as the home of rebels from Missouri, from Kentucky, from Alabama, and from all the rebel States of the South-west. Unable to find any longer a refuge at home, they have sought it here, bearing their treason along with them. For that reason I am for surrounding the ballot-box here with every possible safeguard which we can devise. I am willing, for our own safety, until the General Government shall grant an amnesty, at least, to say to every one of those men who have dared to raise their hands against the nation's life, "You have forfeited the right of suffrage, sacred to freemen, and never shall you exercise it again." For this reason I hope that this Section 2, as adopted by the former Convention, will be allowed to stand, line for line, and letter for letter, so that no disloyal man, no man tainted with treason, covered with the stain of rebellion, spotted with the leprosy of national murder, shall be allowed to share in the elective franchise with us who have battled to drive treason from our shores, and to save California, and Nevada, and Oregon, from the grasp of those who would have murdered the nation if they could. I sincerely trust that this section will stand unaltered, and that no amendment will be allowed to imperil it in the slightest degree.

Mr. HAWLEY. I conceive that the duty which this Convention has to perform, in reference to either the adoption of this section under consideration, or its amendment, is a difficult one.

Mr. HOVEY, (interrupting.) If the gentleman will give way a moment, I will accept the amendment of the gentleman from Humboldt, (Mr. Dunne,) which cures the evil he anticipated.

Mr. HAWLEY. Even then, I say,—and I have but a few remarks to make—that the duty before the Convention, in either the adoption or the rejection of the section under consideration, is beset with difficulties. One principal objection to this Constitution, and to the article we have under consideration, when submitted to the people last fall for their adoption or rejection, was that it legislated too much. Now, sir, to come directly to the point, I submit to the Convention whether it becomes us to legislate upon this subject, when, in the very nature of things, such legislation can effect nothing at present. No provision of this kind can have any effect at the coming election. I, sir, was born and raised in the South, and have been subject all my life to the influences which have been brought to bear upon the young men of that section, and I assert that I believe no man exists who is freer from the taint of disloyalty to the Government of the United States than I am. And, sir, I am utterly, uncompromisingly opposed to the extension of the elective franchise to those men who nourish in their hearts one atom of hostility to the Constitution of the United States, or to the Federal Government, as it was established by our forefathers. But I nevertheless question very much whether the adoption of this section as it now stands will be of any benefit. I submit to the Convention that it is a matter which should be left entirely to the action of the first Legislature which is to convene under our State Constitution. One thing is certain, that if this section stands, (and I have no objection to allowing it to stand so far as the principles involved are concerned,) it can have no possible effect, however wise and judicious it may be, upon the status of the voters at the election at which the adoption or rejection of the Constitution is to be determined. Now, sir, you will find, by following through this section, that it is provided—and I trust that the Constitution we are about to frame may contain the same feature—that

"Provision shall be made by law for the registration of the names of the electors within the counties of which they may be residents, and for the ascertainment by proper proofs of the persons who shall be entitled to the right of suffrage as hereby established."

I trust that the first Legislature under this Constitution will provide such a registry law, and that in it they will provide not only that every man who seeks to vote shall have been

six months a resident of the State, and thirty days a resident of the county, and that it shall be a duty incumbent upon him to have his name registered before the occurrence of every general election at which he seeks to exercise the right of the elective franchise, but that at the time of such registration, every man shall take and subscribe an oath to support the Constitution of the United States; that there and then he shall perform a lustration by which he shall purge himself of any taint of treason, if any such taint remains upon him. Now, sir, the only question with me is, whether it is expedient to retain this language in the second section; whether it is not too much to place in a State Constitution; whether it is not better for us to leave the regulation of the qualifications of voters to an enactment to be made by the first Legislature.

I fully agree with the gentleman from Lander, (Mr. Warwick,) that there are men in this Territory who are tainted with the crime of treason; men who are hostile to the Constitution of their country and the institutions of our forefathers, men who, if their acts could be known and placed properly before the legal tribunals, would forfeit their lives to the outraged laws of their country. And, sir, I believe in hedging these men around, not only with legislative proscriptions, but, if necessary, with bayonets also; and I would so close up the hedge as to render it certain that they should be powerless to do harm. I have myself conversed with men born under the flag of our country, who stated that they considered themselves merely as aliens in our midst, and did not ask to be protected. All they asked, they said, was the same protection as was accorded to other foreigners. For such men I have only the most supreme contempt. I cannot but despise the man, born and reared under our government, who professes to sympathise with rebellion, and yet remains here with folded hands, or covertly seeks, while enjoying our protection, to overthrow our institutions. I believe the proper place for such men would be in the rebel ranks. I can have some respect for the man who, yielding to the impulses of the moment, or to the prejudices of years, goes into the rebel ranks and fights for what he believes to be the right; but for the man who remains here, and covertly seeks to inaugurate that state of affairs which exists at the East, I think no language of reprobation can be too severe, and no sentiments of contempt too strong. But the only question is, whether it is better for the Convention now to legislate, when it can have no practical effect, or whether it is better to give a full and free expression of our sentiments here, and then leave it to the Legislature to provide the qualifications of voters.

Mr. DeLONG. I desire to ask the gentleman from Douglas a question. While I admire very much the sentiments he has expressed, as well as those of other gentlemen who have spoken on this subject, still I think there is one difficulty which has not been met, and that is, if the Constitution now makes a sweeping restriction that no disloyal person shall be allowed to vote, who is to judge upon the question of disloyalty? We find, even among good Union men, as we would all regard them, that one is accusing another of disloyalty, because he thinks he does not go far enough in his views or opinions. It looks to me a little unmanageable; that is my objection. Suppose a man is challenged at the polls, how are you to determine it? By his simply taking the oath of allegiance? Would that be sufficient to purge him? Or what?

Mr. HAWLEY. The gentleman from Storey will remember that I stated it as my desire and hope that the Legislature would pass such a law as would render challenges at the polls unnecessary, except in order to insure the production of the certificate of the registration of voters.

Mr. DeLONG. Yes, it might, perhaps, be covered in that way.

Mr. DUNN. I think it is necessary to say but a word in support of the amendment which I have offered. No one doubts the propriety of preventing disloyal persons, or secessionists, from exercising the right of suffrage until their status be determined by the General Government, but this clause begins with disfranchising all who are convicted of treason or felony, and then goes on to say that "No person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amenety be granted," etc., shall be entitled to vote. Then, in God's name, is not that enough? But then you go further, and say that no "disloyal person" shall be allowed to vote. I repeat the question, Who is the "disloyal person?" How are you to determine it? If you know that a man is disloyal—that, as the gentleman from Lander, (Mr. Warwick,) says, treason is bursting from every pore—then make your charge, prove it, and convict him, if you can. If you cannot prove the charge, you may retain your opinion, perhaps, but unless you can prove it, do not make it against a man, and attempt to deprive him of the right of suffrage. We have already restricted the class of people to which we supposed this would particularly refer. We have required that every man shall be for six months an actual resident of the State before voting. You have, in that case, made a sweeping distinction, and one which I did not approve, because it was in opposition to a principle which has been acted upon for seven or eight years in California, as long at least as it was supposed that the class of persons coming to that State would be politically favorable to the dominant party, and only when that came to be the case was this error discovered, and the rule changed. But that is not the question here. It is simply whether you may be allowed to charge a man with being disloyal, and so prevent him from voting, or throw the whole burden of the investigation upon the days of

election, when you have no one to determine it. Although the man challenged may have the records of courts, and documents well authenticated, you have but to say—"This man is disloyal; I challenge his vote,"—and how is he to prove that he is loyal? He may be ready to swear to support the Constitution, ready to take any and all oaths prescribed, but that is of no avail, and you cannot try the case on election day. I think the amendment is right, and these dangerous words should be stricken out.

Mr. NOURSE. I wish to offer an amendment to the substitute, or rather to the portion proposed to be omitted or stricken out. I move to strike out the words in the original section, "unless an amnesty be granted to such by the Federal Government."

The question was taken on the amendment.

Mr. NOURSE. Now I desire to call the candid attention of members to this amendment, and I hope no feeling of prejudice of any kind will prevent gentlemen from giving it such attention. I think the objection to that phrase, as it is inserted in the original section, arises from a misapprehension of what is intended by the exclusive clause. I do not understand, Mr. Chairman, that we are here assuming the province of the National Government, to punish those men who have borne arms against it. If that were so, I could see a peculiar propriety in putting in this clause, "unless an amnesty be granted." But we are doing no such thing. That is the exclusive work of the General Government; and the laws of the United States provide for the punishment of treason; for the punishment of those who levy war and bear arms against the Government. And when the United States Government proclaims an amnesty, that punishment is at an end. We have nothing to do with that. But now the question is before us, whom will we have for our fellow electors? To whose hands will we intrust the election of our officers, and the making of our laws? Shall this trust be confided to those men whose hands are red with the blood of our own soldiers? Shall it be given to Price's army? Shall it be given to the men who, under Forrest and Chalmers, in cold blood, murdered the garrison of Fort Pillow? Shall we bestow that privilege upon the men who are now defending Richmond and Petersburg against the gallant assaults of General Grant? Shall we give it to the rebel army now holding out at Jackson against General Sherman? We exclude no man who does these things by compulsion. If a man is conscripted into the rebel army, that does not exclude him. But, can it be possible, I ask gentlemen to consider, that any merciful amnesty on the part of the General Government, any declaration that the Government will proceed no further in the way of punishment, will do anything more than merely whitewash them? Can it change the leopard's spots? Can a man worthy to be intrusted with the elective franchise, and fit to hold the highest offices in our gift, the men who have willingly borne arms against the Federal Government—against the best Government the world ever knew? Can it restore to innocence those men guilty of a worse crime than parricide? No! I say, for one, I am not willing that my vote shall be offset and neutralized by the vote of a man who has willingly served under the rebel Price, and as a guerrilla and bush-whacker has murdered perhaps dozens of the soldiers of the United States, as well as peaceable farmers. And yet, an amnesty being proclaimed, men of that stamp will come into our State. Now it seems to me very clear, as I said before, that that saving clause is put in under a misapprehension of what we are doing. We are not punishing these men. We are only setting down our deliberate opinions—and it seems to me, with all respect, that in the framing of an organic law is peculiarly the place for that—as to who should or who should not be the men to carry on the Government, and make the laws for this new State.

If those men who have committed all these crimes, and the one great crime embodies them all, can be purified in heart and soul, and brought back to love of country and true loyalty to its institutions, I would not object to admitting them to the right of suffrage. But the fact is, that the secessionists who have come here across the plains from the eastern States, are the men who, because of their continued wickedness and bitter disloyalty, will not stay around their old homes to see the new order of things there. It galls them to see the power of the Government re-established; the iron enters their souls. It is therefore the most disloyal of the disloyal who persist in coming here. If they persist, very well; let them come, though they are no very desirable accessions to society in any place; but, for God's sake, let us put up the bars against allowing thirty or forty of them to annul the votes of every member of this Convention. It seems to me that this clause, as it stands, has been misapprehended. Gentlemen have not enough considered it; and when it has been properly considered, I think the Convention will agree with me that it should be stricken out.

Mr. EARL. I can see no objection at all to allowing this Section 2 to remain as it is. If I understand it, the Amnesty Proclamations—for such, no doubt, there will be from time to time, and we have one already—will do away with our restriction. That proclamation already made sets forth who shall and who shall not be admitted to the rights and privileges of citizenship; and, in the absence of any such rule, by authority of the Federal Government, we prescribe our own rules. Now, sir, I cannot see any such objection as has been urged here, from the very fact that the Amnesty Proclamation does set forth and prescribe who shall be restored to citizenship. We may, hereafter, prescribe men who are disloyal, by our registry law, but that is the only way we can reach them. We can alter, change, increase, or dimin-

lish the force of the language we use here; but, after all, I do not see how that is going to affect the matter, since the General Government tells us who can and who cannot vote.

Mr. NOURSE. Will the gentleman allow me to ask a question? Does he say that the Amnesty Proclamation applies to this new State, or to any State not now in rebellion?

Mr. EARL. It tells us, in effect, who is to vote, and in that way it cuts off any action of ours in relation to treason against the General Government. I understand that very well. This section suits me as it stands. I hope we shall adopt it, and if we want to alter the matter in any way, we can do it in the registry law.

Mr. CROSMAN. As it is time for the noon recess, I move that the Committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the Chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration the subject referred to them, had made some progress therein, and asked leave to sit again.

The report was received, and leave granted accordingly.

On motion of Mr. CHAPIN, at 12 o'clock, the Convention took a recess until 1 o'clock, P. M.

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AFTERNOON SESSION.

The Convention met at one o'clock, P. M., and was called to order by the President.

COMMITTEE ON PHRASEOLOGY AND ARRANGEMENT.

Mr. BROSNAN. I have a resolution here which I wish to offer, for the appointment of a committee, and I ask that the usual parliamentary courtesy, in respect to the appointment of the committee, be waived, as I cannot serve as the chairman of the committee.

The resolution was read, as follows:—

Resolved, That a Committee on Phraseology and Arrangement of the Resolution, Ordinance, Preamble, and Constitution, to consist of seven members of this Convention, be appointed by the President.

The question was taken, and the resolution was adopted.

The PRESIDENT appointed as the Committee, under the resolution, Messrs. Kinkead, Parker, Banks, Brosnan, Belden, Brady, and Murdock.

JUDICIARY COMMITTEE.

Mr. DeLONG. I move that two more members be added to the Judiciary Committee.

The question was taken, and the motion was agreed to.

The PRESIDENT appointed as such additional members, Messrs. Warwick and Hawley.

RIGHT OF SUFFRAGE.

Mr. FITCH. I move that the Convention resolve itself into Committee of the Whole, for the further consideration of Article II, entitled, Right of Suffrage.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. Fitch in the Chair,) and resumed the consideration of Article II, entitled, Right of Suffrage.

DISFRANCHISEMENT OF REBELS.

The CHAIRMAN. The question before the Committee is upon the amendment offered by Mr. Nourse to the amendment of Mr. Hovey to the second section. Mr. Hovey moves to amend, by striking out the words, "and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government." Mr. Nourse moves to amend that amendment, by striking out only the words, "unless an amnesty be granted to such by the Federal Government." The question now is upon the latter amendment.

Mr. TOZER. Is a further amendment in order?

The CHAIRMAN. It is not.

Mr. BANKS. I understand there was an amendment offered by my colleague, (Mr. Dunne,) to strike out the word "disloyal."

The CHAIRMAN. That amendment was accepted by Mr. Hovey, and therefore becomes a part of his original amendment. The Chair should have so stated it.

Mr. WARWICK. Was not the amendment of the gentleman from Humboldt, (Mr. Dunne,) accepted by the gentleman from Storey, (Mr. Hovey,) as a substitute for his own, and not as an amendment?

The CHAIRMAN. The Chair understood it was accepted as an amendment.

Mr. WARWICK. Did it not do away with the amendment of the gentleman from Storey, entirely? Did he not accept it in lieu of his own, thereby doing away with the one he offered previously?

The CHAIRMAN. The Chair thinks the gentleman is correct.

Mr. WARWICK. Then the original amendment is withdrawn, and substituted by that of the gentleman from Humboldt, striking out the words "disloyal or," in the latter part of the section, and the amendment pending of the gentleman from Washoe, (Mr. Nourse,) is proposed as an amendment to that?

The CHAIRMAN. That is the understanding of the Chair.

Mr. HAWLEY. I think it would be infinitely better to retain the section as a whole, or, perhaps, striking out only the word "disloyal," than it would be to adopt the amendment of the gentleman from Washoe. I believe I take

a position which cannot be controverted, when I assert that the Federal Government possesses the imprescriptible right of declaring the qualifications of citizens of the United States, and that when the Federal Government, by an enactment of Congress, declares that a man, or a class of men, are citizens of the United States, those men, so established in citizenship by Federal enactment, are entitled to all the rights of citizens; regulated, it is true, in a certain manner and to a certain extent, by State enactments. They are subjects or citizens of the Federal Government. Now, sir, it is a right of which a citizen cannot be divested, that he should be allowed to exercise the right of suffrage.

Mr. NOURSE. Will the gentleman allow me to ask him a question? Black men are citizens, and women are citizens of the United States, but does the gentleman say that women and black men cannot be excluded from voting?

Mr. HAWLEY. I do not pretend to say that we cannot exclude black men from voting; or that we cannot exclude women from voting, but I do say, and I assert it most positively as my conviction, although I may be wrong, that we have no right whatever to exclude a white man, who has been pronounced by the Federal Government to be eligible to all the rights of citizenship, from the right of voting. There may be some questions, in this connection, which I shall not stop to argue, but I lay down the proposition that if the Federal Government declares that, under certain conditions, a man who has been in the Confederate army, a man who has borne arms against the Federal Government, becomes purged of the offense he has committed, and is restored to all the rights he before possessed, it will be impossible for this State to divest him of the elective franchise.

Now, sir, the gentleman from Washoe (Mr. Nourse) laid particular stress on the fact that the vote of one of those parties—of a man who has been in arms against the Federal Government—can offset, or nullify his vote. That may be true, but I think when gentlemen take counsel from such suggestions, they are governed by a sentiment which is, to use the language of a great poet, "an impostor to true fear." I believe, sir, taking into consideration the enlarged intelligence, the more perfect understanding of our rights and duties, and privileges, which we now possess, that but little danger exists of outrages, in the future, upon the ballot-box. I believe that the loyal sentiment of the Pacific Coast is so united, that the men who do not falter in their devotion to the National Government are so determined, that men coming here even with this stain of treason upon them, will be so closely watched, and that the elections will be canvassed so thoroughly, that but little danger exists of men being placed in office here who would follow the example of those who have become so infamous in our history, or who would even attempt to betray us, as States have been betrayed heretofore.

Even admitting that we have the right to exclude from the right of suffrage those men who have been restored to citizenship by the proclamation of the President, I believe that, by so doing, we should place ourselves in a position of antagonism to the Federal Government; that we should raise questions which, to say the least, it would be unwise to raise—questions which could but result in long, useless, expensive litigation. I believe it becomes us, as men who ought to know no such word as fear, in regard to the result of any attempt to betray our liberties here, to open the ballot-box freely to receive the votes of all men who comply with the laws. Our duty lies not in attempting to set aside any declaration of the Federal Government, but in a firm, resolved, fixed determination, to become, each and every one of us, canvassers, and to use all those legitimate and natural means of persuasion, argument, and entreaty, which will result in such Union majorities, at all elections to be held in the future, as to prevent forever all danger or apprehension of the election of any man, or any considerable number of men, at least, to positions in which they might be enabled to do us injury, or to attempt to injure or betray us.

And, if this section is to be retained in part, I think this Convention will be pursuing a wise and proper course by allowing it to remain altogether intact. I should prefer that the qualifications of voters should be left altogether to the Legislature; but if we are going to prescribe any qualifications, do not let us cut out or set aside this saving clause, for, by so doing, I think, as I before observed, that we are placing ourselves in a position of antagonism to the Federal Government, only to gratify an impulse, or a sentiment, which, to speak for myself at least, finds no place of lodgment in my breast.

Mr. COLLINS. I would inquire what question is now before the Convention.

The CHAIRMAN. The amendment of the gentleman from Washoe, (Mr. Nourse,) to strike out the words, "unless an amnesty be granted to such by the Federal Government."

Mr. COLLINS. Then that question does not embrace the word "disloyal," proposed previously to be stricken out?

The CHAIRMAN. No, sir.

Mr. COLLINS. I am decidedly opposed to striking out those words proposed by the gentleman from Washoe, because I think the application of that amendment would be decidedly unjust to a great many of the citizens of this State in the future. By implication, the gentleman, in offering his amendment, assents to the propriety of depriving all men of the right to vote who have voluntarily taken up arms against the Federal Government, or held office, military or civil, under the Confederate Government. We occupy the double position of citizens of the United States and citizens of a separate State, and hence I take issue with the gentleman from Douglas, (Mr. Hawley,) entirely, that we have not a right to exclude any class

of men from the elective franchise. It is the privilege of every State, as such, (and it matters not what the laws of the General Government may be in regard to her own citizens, for it is a right which the General Government always has accorded to the several States,) to regulate the elective franchise. And I should be very sorry indeed to think that the resolution we passed the other day, adopting the Constitution of the United States, was going to conflict with that right—that the Constitution of the United States would conflict in any way with the right of each State to make regulations, by its own Constitution or otherwise, in regard to elections. I take it that the force of that resolution was simply in regard to our recognizing the sovereignty of the United States, the sovereignty of the Federal Constitution, and the laws which Congress may enact from time to time affecting the States and Territories. But the action of the Federal Government must have some specific and direct connection with us, or some direct and positive declaration as to the act to be done by the State, before it can be binding upon us. Look at the injustice which the construction of the Amnesty Proclamation contended for would do to the loyal citizens of this State. We may, and probably shall have coming among us men from Kentucky, from Missouri, and from States which are still engaged in making war against the Government of the United States; and when this rebellion shall be put down, I am strongly impressed with the conviction that the mass of these men will out-Herod Herod himself in their support of the Constitution of the United States. They will be the ardent supporters of every movement calculated to give strength to the Government, and will become the most active and determined of our loyal citizens. But if we proscribe them, as we should do by striking out this clause, what would be the consequence? Why, they are eligible to any office within the gift of the Government of the United States, and the very men whom we disfranchise here, the President of the United States may select to be Ministers at foreign courts. He may appoint these very men as Collectors of ports, as Postmasters, as Consuls, as Judges. They may be selected as jurors, to decide upon the rights, and the liberties even, of their fellow citizens. I am looking now at the injustice, at the inequality which would result if we should make this discrimination.

I remember that last year, when this section was under consideration, I was opposed to it *toto cœlo*, and the last speech I made in that Convention, previous to my long illness, was in regard to this very subject. But I shall not enlarge further upon this point at present. I agree with the gentleman from Douglas, (Mr. Hawley,) in thinking that this question of the elective franchise should be left to the Legislature. This special legislation on our part presupposes that we know more, and understand better the wants of the people in the future, than future Legislatures can, coming fresh from the people every year, knowing the wants of the people, knowing the exact condition of the State from time to time, knowing what the difficulties are to be met, and what forces are required to meet them. I say that such a supposition is not well founded, and I think it behoves us, out of deference to the people of this State, to leave this matter of legislation entirely to them.

Mr. EARL. I probably was in error in the early part of the day, in relation to this section. I took the view, and it seems that the gentleman from Douglas [Mr. Hawley] takes the same view, that we have no right to override the acts of the General Government; but if this Convention considers it advisable to leave this section in full force as it stands here, I shall go against striking out the words proposed to be stricken out by the gentleman from Weshington [Mr. Nourse.] It seems to me that when we undertake to be rigid in our action, and to disfranchise a certain portion of our people, we should be very cautious how we do it. If this Convention shall decide that this article may properly be put in force in every particular, I trust we shall scrutinize it very closely before we pass it. It occurs to me that, as my colleague [Mr. Collins] has remarked, we should leave this matter to the Legislature, unconditionally. The truth is, that if we take the course which has been proposed and urged, that course will weigh very much against the adoption of the Constitution by the people. Would I, if I had at some time committed some treasonable act against the Government, vote for the adoption of a Constitution which would disfranchise myself? No, sir. Again, we cannot draw the distinction between those who have volunteered in the Southern army and those who have not. That would be impossible. Many young men, and even mere boys, have been conscripted into the armies of the Rebellion, and the effect of the action proposed would be that if they escape and come here they will find themselves disfranchised, and outlaws in every sense of the word. Would not the tendency be to convert them into desperadoes, and enemies of society? That would be a result which we should certainly deprecate and deplore. I believe that the strong should always be liberal, and I trust that if this section is to stand at all, those words will be retained. Then it will be shown conclusively that we leave these cases to be dealt with entirely by the General Government.

If I am wrong, I hope some gentleman will correct me; but I think, now, that this amnesty clause covers the whole ground and leaves the whole matter just where I want it to be left—with the General Government. Then we leave the Government to say who are citizens, and, consequently, voters, and who are not. That is the correct position. As to the disfranchising of each and every individual who may have been concerned in the rebellion, it is true that some of

ness ought to be disfranchised, but we cannot draw the necessary distinction as well as the General Government can, which will have to deal with them directly. It has been shown, or intimated, that only the worst of the rebel outlaws come to this country, but I cannot see that. I believe that many are immigrating to this Territory now who have become tired of the war, and have come away from it on that account. Many of them have become convinced that it is wrong. Now, would it not be mistaken policy in us to adopt a sweeping provision to disfranchise them entirely? They may become good citizens, and therefore do not let us prevent them by cutting them off entirely from the privileges of citizenship.

Mr. JOHNSON. This subject has already been very fully discussed, not only during the doings of this Committee, but also by the newspaper press of this Territory, from the rostrum, and in the former Convention, charged with the performance of the duty of framing a Constitution to be submitted to the people. I do not propose to prolong that discussion, by putting forth my individual opinions, for the sake of any intrinsic merit they might be supposed to possess, but I simply desire, in a few words, to give my views on this subject, in order that my silence may not be construed as indicating a fear on my part to take part in the discussion, or to place myself on the record on the important questions involved. I shall beg the indulgence of gentlemen, in the few remarks I have to offer on the subject before us, in order that those remarks, as is usual in Committee of the Whole, may be permitted to take a somewhat discursive range.

There are two amendments, I understand, before the Committee; one, that of the gentleman from Humboldt, (Mr. Dunne), to strike out the word "disloyal," and the other, the amendment of the gentleman from Washoe, (Mr. Nounes), to strike out so much as relates to an amnesty being granted by the Federal Government. Now, sir, in the outset, I will state what my position is, not only in regard to those two amendments, but regarding the whole subject—the reasons why I maintain that position—why, on the one hand, I am in favor of the proposition of the gentleman from Humboldt, and, on the other hand, am opposed to that of the gentleman from Washoe. Various opinions have been advanced and advocated by members here as to the extent of the authority of this Convention to impose restrictions upon the right of voting. In that respect many gentlemen, I think, labor under a very great error. I insist that it is entirely within our province to declare who shall and who shall not vote for the various offices that will be created under this Constitution, notwithstanding any Amnesty Proclamation, or any action whatsoever on the part of the Government of the United States. Yet, at the same time, whilst I disagree with gentlemen in the opinions which they have advanced, and believe that it is within our power to do this, I say that I cannot concur in the views expressed by the gentleman from Washoe, (Mr. Nounes), when he maintained that we ought improperly to exclude even those who have been or may be exempted from the penalties of the law by the the operation of an Amnesty Proclamation.

And for the views and opinions I here express, so far as I am personally concerned, I am responsible only to the people who sent me here. I only enunciate the same views which I have on previous occasions expressed, in the former Convention and elsewhere, and after the expression of which I have had the honor to be indorsed by my constituents, and returned to this Convention, with a full knowledge of the views and sentiments I entertained on this, as well as other public questions.

Now, sir, I am decidedly in favor of the amendment to strike out the word "disloyal," as proposed by the gentleman from Humboldt (Mr. Dunne). I am opposed to retaining the word "disloyal," and for this reason: It would place it in the power of every petty inspector or judge of elections throughout the State to determine and decide the question as to who is loyal and who is not loyal. I do not propose to invest them, nor to invest any other subordinate authority, with such extraordinary power. Why, sir, it might seem to be personal, and, therefore, perhaps not strictly in order, for me to say that I have heard ascribed to members of this Convention, (men who have received the indorsement of as loyal constituencies as any of us have,) disloyal sentiments; but I will say that I have heard such sentiments ascribed in this Territory to gentlemen whom I believe to be as loyal as any man in this Convention. Such accusations, here or elsewhere, may have no real foundation, but would, in the hands of a petty tyrant, invested with the necessary authority to render effective the purposes of this clause, become an instrument of oppression, and a power most likely to be abused. This elective franchise is too great a boon and privilege to be put in that way upon the hazard of the caprice or whim of any such subordinate officer, clothed with extraordinary powers; and it is for that reason that I am opposed to this language, and in favor of striking it out.

As to the other proposition, I say I am not willing to go beyond the wisdom, the intelligence, the patriotism, and the loyalty which has thus far marked, and which I fondly hope will continue in the future to mark the administration of our Federal affairs, by Abraham Lincoln, the President of the United States. I am willing to be instructed in my action here, as a member of this body, by the same considerations of humanity, the same wise and enlightened policy, and, withal, unselfish patriotism, which, amid the most eventful and trying period of our nation's history, have marked the career of our Federal Executive; and I am willing that my vote and speech on this exciting question shall be tested by the platform of princi-

pins on which that distinguished man now stands; and that his official acts, in connection with this unholy rebellion, shall serve as my guide in the performance of my duties here.

It now appears as if, when this matter was under discussion in the preceding Convention, some gentlemen who were engaged in that discussion must have been imbued with the spirit of prophecy; for at that very time, while some of the members of that Convention were enunciating their views in favor of making an exception in behalf of such as should be granted an amnesty by the Federal Government—on that very day, I say, when those utterances were made, the President of the United States was engaged at Washington in the preparation of this same celebrated Amnesty Proclamation, which was soon thereafter sent forth to the world. Now, sir, the position assumed on this subject by Abraham Lincoln, who, I hope, is the preferred presidential candidate of us all—assuredly is of all, save one—for I know that my friend from Nye, [Mr. Proctor,] is probably waiting for the unveiling of the mysteries of the Chicago Convention——

Mr. PROCTOR, (in his seat.) Oh, no; Fremont.

Mr. JOHNSON. Well, that is probably about as objectionable. With this one exception, I apprehend that there is no man in this Convention but stands fully upon the platform of the Baltimore Convention, and unreservedly supports its nominees. I am willing, for one, to place myself squarely on that platform, and now, and upon all future occasions, to labor for the success and defend the public acts of the nominees of that Convention. And I say I am not willing to go beyond that. I am willing to trust to the wisdom and patriotism of the Executive and of Congress, and to let them govern us in this matter of the elective franchise. For that reason, I am opposed to striking out that clause which has been proposed to be stricken out by the gentleman from Washoe. I am willing to embrace within the terms of our Constitution, so far as relates to the rights and privileges of citizenship, all those who may be embraced within the words and within the spirit of the Amnesty Proclamation, or any similar proclamation which may hereafter be promulgated, and I am desirous of excluding all who are not so embraced. I want it distinctly and emphatically understood, that I indorse the sentiments which the gentleman from Washoe has uttered, and the similar sentiments uttered by others, so far as they condemn those who have not purged themselves by the terms of the Amnesty Proclamation, those whose hands are yet dyed in the blood of our fellow citizens, those who have not come up fairly and squarely to the mark and purged themselves from this vile and terrible crime of treason. I am ready to say that such as they shall not be permitted to enjoy the benefits and privileges of the elective franchise. But I am not willing to go further than that, in the manner proposed.

With these views, I am prepared to submit these questions to the action of the Convention; well assured that, whatever action the Convention may take in the matter, it will be such as to meet the approval and indorsement of our respective constituencies.

Mr. CHAPIN. I am very glad, Mr. Chairman, once more to indulge in the hope that that word "disloyal" will be stricken out. I was anxious to have it stricken out in the last Convention, and I am still anxious to have it done. I think it a dangerous word to have incorporated, in the manner it is, in that section, especially in our organic law. It does put too much power into the hands of those officers who have charge of the various election polls all over the State. And who knows how soon it may come to pass that our opponents may themselves be the gentlemen to preside over the ballot-boxes on election day? and then they might decide that I am a disloyal man, or that you are, or that any other member of this Convention is disloyal. In the heat and excitement of an election, many absurd and ridiculous things are done, and it would not be strange if one or two men could be found to come up to the polls and testify that a man had said or done certain disloyal things. I say, such a provision would operate very harshly, and I feel confident that great injustice and injury might result from a clause of that kind. I therefore hope that the word "disloyal" will be stricken out. In regard to the other amendment, I trust the section will be allowed to remain as it is.

Mr. KENNEDY. Like the gentleman from Ormsby, (Mr. Johnson,) I wish to explain my position. I, like him, am opposed to one of the amendments, and in favor of the other. But unlike him, I am in favor of the amendment proposed by the gentleman from Washoe, and opposed to the one offered by the gentleman from Humboldt. Like the gentleman from Ormsby, also, I say that my opinions are known by my constituents upon this question. In every precinct in our county, I have advocated those doctrines which I here advocate, and I also have been returned to this Convention.

Now, first in regard to striking out this part of the section, which reads, "unless an amnesty be granted to such by the Federal Government." I believe I may say, in few words, this: That where a man has voluntarily borne arms against the Federal Government, or held any civil or military office under the Confederate Government, that man has been imbued with the spirit of secession to such an extent that you never will be able to make a good citizen of him afterwards. I believe there is such a poison connected with that doctrine, that when a man once voluntarily embraces it he cannot be cured. I believe, further, that it will take generation after generation to root that poison out of the minds of those who have embraced it. For that reason I am opposed to allowing any man who has voluntarily adopted secession

is a good doctrine, to come into this new State and neutralize my vote.

I have known some of these gentlemen. We, in our county, know numbers of them, for those immigrants which have been spoken of, many of them, remain with us, and we are made to feel the practical effects of this poison. I know of men in my own town who have been in the military service of the Confederate Government, and have since taken the oath of allegiance prescribed by the United States Government; and I know, sir, that they are still essentials, that they are plotting and scheming to injure the Federal Government. I know that they would do anything to kill this very Constitution we are framing, or that of any other loyal State. I have had a little experience with these men, for some of them are my friends, so far as other matters are concerned. I know this measure which I am advocating will occasion some hardship in a few instances. There are cases, no doubt, where a man who has served the Confederate cause may become a good and loyal citizen. A man may, upon the spur of the moment, have been led to commit a crime, and he may have subsequently repented of it, but should we, for that reason alone, extend to him an offer of pardon? Does not the murderer, before his execution, frequently repent in sackcloth and ashes? But when the law is offended, the offender must pay the penalty. Now, then, if treason, if disloyalty of this character, is a greater crime than murder, and I contend that it is, for it embraces all the crimes known to the law, then why in this instance, though they sincerely repent, should we say that the penalty shall not be inflicted?

Now, Mr. Chairman, in regard to this word "disloyal," unlike an old friend of ours who was in the last Convention, I am a little "tenacious," and I will give my reasons. I do not agree with the gentleman from Ormsby, (Mr. Johnson), that it would place it in the power of any petty inspector, or judge of election, to decide upon this question of loyalty. I will state my idea of the object of that word in this section. In the first place, I take it, that to make these questions practical, the Legislature must pass the necessary laws; and I believe that if that word "disloyal" is left in the section where it is, the Legislature will prescribe a certain oath stronger, if possible, than the one we have all taken; and when you challenge a man at the polls on the ground of disloyalty, this oath will be administered to him, and when he takes it, he will have a right to vote. Then, if you can prove that he has perjured himself by taking that oath, he will be liable to a criminal prosecution for perjury. Now can you do more than that in regard to the other disabilities? Suppose a man has committed a felony in the State of California. He goes to the polls, and you challenge him on that ground. Suppose, now, that you have all the certified records, all the proofs which would be necessary to establish his guilt in a Court of justice, if you were to present them there; still, if the man swears that he has not been convicted of a felony, can the judges and inspectors examine your proofs and say that the man shall not vote? No, sir. If he demands it, they must administer the oath, and let him swear that he has not been convicted, and if he does that, then he has a right to vote, and your only remedy in such a case is to prosecute and convict him of perjury. For these reasons, I say that the word disloyal is right. When I see a man whom I believe to be disloyal coming up to the polls to nullify my vote, I tell him that he must take that oath.

And that thing, I will say, has been done in some of the extremely loyal towns in our Territory already, and I thank God for it, though, perhaps, it was not altogether legal. Now, I wish to make this a legal proceeding, and not a mere mob law, as I think it has been. If you compel a man to take this oath, and if he is willing to perjure his soul before God and man by taking a false oath, I do not know that we can help his voting, although we may punish his perjury afterwards.

Mr. NOURSE. I wish to say a few words in relation to this matter. It seems to me there is a singular misapprehension, either on my part or on the part of other gentlemen, as regards the powers of the Government of the United States upon this matter of voting, or of defining who shall vote. I find no power whatever given in the Constitution of the United States to Congress to point out the class of men who shall be entitled to exercise the elective franchise. There is but one section in the whole Constitution where it is spoken of.

Mr. JOHNSON. Will the gentleman permit me to interrupt him. The gentleman from Washoe, when he speaks of those who entertain that singular misapprehension as to the powers of the Government, uses the term "gentlemen"—the plural form. For my part, I do not wish to be included, and from my recollection of the range which the discussion has already taken, I do not understand that there is more than one gentleman in this Convention who now asserts the proposition that it is competent for Congress to prescribe the rules of voting, or the qualifications of voters.

Mr. NOURSE. I understand the gentleman from Douglas, (Mr. Hawley,) also the gentleman from Storey, (Mr. Collins,) who sits near the gentleman from Ormsby, as taking the same view.

Mr. COLLINS. The gentleman from Storey disclaims it entirely.

Mr. NOURSE. I am very glad to hear it. But some of these gentlemen did say that these men whom we propose to exclude from the exercise of the right of suffrage might become grand and petit jurors in the United States Courts, and occupy other positions under the authority of the United States. Now, I have to say that that cannot be, because the grand and

petit juries are drawn in the same manner in the United States Courts as is practised in the Courts of the State where such United States Courts are held, and this Constitution provides that all persons who are required to sit on juries, whether grand or petit, shall be electors of the State. No man, therefore, who is not an elector of the State of Nevada can find a place in the Grand Jury room of the United States Courts in the State of Nevada, nor on juries in the State Courts either. So much for that. The United States do not assume to regulate the matter in any way whatever. The United States have no right to assume it; it has never been claimed by any Administration since our Government was formed. They leave both the matters of the qualifications of jurors and the elective franchise entirely to the State, or to the Government of the State, and while in one State it is provided that a man must be a citizen of the United States in order to vote; in another, the right to vote is given to such persons only as have resided in the State six months, as in the State of Illinois; and so on, through other electoral qualifications. These qualifications vary in different States.

Now, I wish to reply to a doctrine which seems to me to be a monstrous heresy, namely, that all citizens have the right to vote. Why, I can remember that there was once—though it seems to me more like a horrid dream than a reality—a decision of the Supreme Court that black men are not citizens, and that they have no rights which white men are bound to respect. But, at the present time, it is conceded that black men are citizens; they are so recognized everywhere; and yet we have struck them out from the list of voters, and they are excluded from the ballot-box even in California. We have excluded them from the franchise in our Constitution, and we find no difficulty on that score. Again, there is no doubt or question but that women are citizens, just as much as men are, and yet we do not allow women to vote. If we know it, the fact question of citizenship in the United States has no bearing on this matter. It is for us to say whether, under the Constitution which we are framing, any man, or class of men, citizens of the United States, or not citizens of the United States, shall be allowed to vote. Under the Constitution of the United States, it is provided that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States;" and yet, who claims that a citizen of Massachusetts can go to South Carolina and vote there, merely because he is a citizen of Massachusetts? Now, as to what course we shall pursue, and as to following Abraham Lincoln, and all that, no man is inclined, I think, to support the Administration more fully and thoroughly than I am. I have had the honor of holding office under the Administration, and I feel grateful to it. And yet I do not feel that that binds me to approve of every act of the Administration, because I suppose our Administration may commit errors. But, aside from all that, I do not understand that the proclamation of the President gives any light in this matter upon the track which one gentleman wishes us to pursue. I understand the Amnesty Proclamation to take away the punishment which is due to those men who have rebelled—that whereas, before the proclamation, those men were all liable to be tried, convicted, and punished, for their treason, now the Amnesty Proclamation comes in and says that upon taking a certain oath they shall be relieved of all those disagreeable consequences of treason. But it does not say that those men may go to Massachusetts and vote. It does not pretend to lay down any rule of action for the States. It simply takes away the punishment for the the crime of those men. If they remain in the States where they are, and there is no law, or constitutional provision prohibiting them from voting there, then they will not be disqualified by their crime. They are not in danger of being disqualified by conviction, because of the proclamation, and they may vote. That is all there is of that. We are here left at perfect liberty to take that course which shall seem to us best, and I insist on coming to that issue without any clap-trap, or anything of the sort. Is it best for this young State to allow those men who have deliberately committed those crimes—and they must have done it willingly, under this provision—to have a voice in making our laws and choosing our officers?

Some gentlemen seem to be tender-footed on that issue. They seem to fear that we shall lose votes by this proposition. We have to submit this Constitution to a constituency, among whom are some such men as have been referred to, who have the right of voting upon it, and they therefore do not want to raise that issue.

Now, Mr. Chairman, I do think, in view of this objection, that the political sensitive of things here in Nevada must be most unhealthy. What do we see? With the exception of one organization, the Union party, we find that we have here open and avowed rebels and secessionists of every shade and hue. They are crawling into our caucuses, crawling into our conventions, and taking part in our deliberations. Instead of having a square stand-up fight over principles, they get the advantage of us by cunning. Cunning copperheads get into our political organizations, under our own banner, and there they manage to defeat the real end and object of Union men. I say that is unhealthy. I say, with all deference, of course, that nothing could be better for this new State, than that the issue should be plainly drawn between unconditional Union men and rebel sympathizers.

Now, I ask gentlemen, in all sincerity, to answer to themselves—I do not ask for an answer here, but of any future time—this question. My acquaintance with this class, personally, is not large, though I have heard of many rebels being among us, but I would like to have gen-

question say to themselves whether they know a single man that has served in the armies of the rebels, and has got out here at last safely away from danger, that is a good Union man? There may be one, two, three, or a dozen, possibly, here in town, but is there one such out of town? The Convention has already decided—it is said here, in our first article—that "All men are by nature free and equal." We do not mean equal politically or socially, of course. We do not mean to say that all men must weigh one hundred and fifty pounds each; and we have said that blacks are not equal to whites. Now that we have changed the Ethiopian's skin, I ask if we will go the whole figure and say that the leopard can change his spots? Have not we gone quite as far on that task as we can go? Is it possible that the large population which has come to us from the rebel armies—and more to follow, if this provision is left in the article before us—will be good, reliable Union men? They may take as many oaths as you have a mind to impose, but the reptile snake is in them still, and whenever the opportunity is given, the poison will be struck into the heart of our system of government again and again. It is because I have no faith in the taking of oaths by rebels, to change their dispositions, and it is because I do not believe that Abraham Lincoln's pardon will purge them from their wickedness, that I go for this amendment. It is purely because I believe that this provision, allowing rebels to vote, will prove a misfortune to the State, the effects of which we do not know, and shall not know till the mischief is done, that I desire to have this clause excluded.

Mr. DeLONG. The gentleman who have addressed the Convention on that side which is supported by the gentleman from Washoe, (Mr. Bonnet,) seem to consider the effects of the Amnesty Proclamation in a light entirely different from what I do. It is true, the proclamation only relates to the consequences of crime, and only relieves those who have been guilty of treason, from punishment. But I submit, that when a man is convicted of larceny, or robbery, or murder, or manslaughter, or any other felony, the punishment of which is imprisonment, and one of the consequences of which is that he is disfranchised, unless relieved by the pardoning power; when that power does intervene, it operates exactly like this proclamation of amnesty. It relieves him from the consequences of the crime, and in thus relieving him, it restores the offender entirely to his former position. It is very disagreeable, no doubt, to gentlemen—it is to me, at all events—to see a notorious thief, who has served in the penitentiary, and been pardoned only a few days before the election, perhaps, come up to the polls, and checkmate my influence, by casting a vote in opposition to mine. It seems to be all wrong, with the case of the rebel, who comes up and tenders your vote under this Amnesty Proclamation. But in the former case, the wisdom of that policy has not been doubted. It is the law of every State, and, I believe, of every civilized country on the face of the globe, that among the consequences of a pardon, is a restoration to all the rights which the person pardoned possessed before the conviction. Now if the Amnesty Proclamation intervenes, and says to these who have been shedding our brothers' blood on a thousand battle-fields, that their crimes are pardoned, and they are restored to the rights of citizens; and if the power that issues that proclamation is paramount, how can we say that they are not restored to those rights? How can we say that notwithstanding that proclamation, notwithstanding the law of Congress, here in our midst, with the Constitution of the United States adopted over us, with the proclamation of amnesty supposed to be made in accordance with the Constitution by the head of the Government, we shall assert the negative of what the President proclaims in that proclamation? I do not see how we can legally do it. And I believe that anything in our Constitution contrary to what is provided in that proclamation, would have to give way to it—that any Court would determine that that Amnesty Proclamation has the effect of restoring the party affected by it to all the rights which he enjoyed before he became engaged in the rebellion.

Mr. KENNEDY. I wish to ask the gentleman a question. Does he contend that we have not the right, in this Constitution, to fix the qualifications of voters, notwithstanding the Amnesty Proclamation? Could not we shut out any class of men we saw fit?

Mr. DeLONG. No, sir. I say we have a clause in the Federal Constitution which guarantees to the citizen of each State "all the privileges and immunities of citizens in the several States," and if we embraced in our Constitution a clause providing that any man who is born in Louisiana shall be prohibited from voting here, it would be not only wrong, but unconstitutional. It would be violative of the spirit of the Constitution and the laws of the Federal Government.

Mr. COLLINS. Will the gentleman state that proposition again.

Mr. DeLONG. I say that I believe that if we should embrace in this Constitution a clause saying that a man born in Louisiana, or in the State of Maine, or any other State, shall not be entitled to exercise the right of an elector here, it would be unconstitutional. And that shows that we have no right to discriminate in this way.

Mr. BANKS. I will ask the gentleman, since in some States negroes have a right to vote, and we have provided that they shall have no such right here, whether he does not think the same rule would apply to that provision?

Mr. DeLONG. We in effect deny, by the adoption of the first section, that the negro is a citizen.

Mr. NOURSE. If that be so, why do we say

"every white male citizen," showing that some citizens are excluded?

Mr. DeLONG. I do not know the reason for using that language, but I will suggest that it was probably employed in order to leave no doubt on the subject, because there is a very considerable and respectable number of gentlemen who claim that the negro is a citizen, differing from others in their opinion on that subject, and consequently the word "white" may have been put in so that, even if the negro is a citizen, not being a white man, he is still not entitled to vote.

But I do not care about discussing that point. I say that whether we have the right to exclude those who were included by the amnesty proclamation or not, we should be governed by that policy which prevails in every civilized land, under which, when a man is pardoned by the pardoning power, it is held to be a fair presumption that he was pardoned for good and sufficient reasons, and that the executive, in granting the pardon, has done that which restores him to citizenship. That is my view. We consider that the Governor has good reasons for his action, when he pardons a man from the penitentiary, and restores him to citizenship, although he may have been convicted of an infamous crime, and we do not allow ourselves to doubt but that he has a right to vote; I never have heard it doubted in any legislative body, or any convention, or elsewhere, that in such a case all the original rights of citizenship, including the elective franchise, are restored to him, as purely as if they had never been contaminated.

Now, I look upon the future, in regard to this war, a little differently from my friend from Lyon, (Mr. Kennedy.) As I look upon it, the war is now being conducted by southern men more from a feeling of pride for their section, than from any attachment to their so-called Confederacy. I believe that nine-tenths of the men who are serving in the army of Jefferson Davis, to-day, if brought right down to a fair and candid exposition of their views, would say that they disbelieve in the doctrine of secession, and if they were pressed as to the reason why they were fighting in the secession army, they would say they were doing it for the honor of their section, or the honor of their particular State. They inaugurated this war under a fearful misapprehension. They inaugurated it under the mistaken idea, first, that the northern man would not fight, and next, under the equally mistaken idea, that northern men would not expend their money to conduct the war. They went into the war laboring under these two fearful mistakes, and after having got into it, their inborn American spirit prompts them to fight it out, right or wrong, and they intend to fight it through, just from that spirit of pride alone; and after the war is through, you will find that they will return to their allegiance in good faith. And, on the same principle that a burned child dreads the fire, will they dread rebellion, and repudiate it more than any other class of men, when once they have so returned to their allegiance in good faith.

I have but little confidence in the oaths of allegiance or in the unionism of southern men who have recently taken those oaths, and proclaimed their unionism so loudly, especially so long as any hope of the success of the rebellion exists. These men have been so long proclaiming the doctrine of secession, asserting the successes of the Confederate troops, doubting the reports of Union victories, and receiving with unquestioning faith the reports of Southern successes, that I am compelled to doubt all their professions of loyalty and unionism. I do not believe a word of it. I do not, to use a common vulgarism, "go one cent on" their unionism and loyalty, whoever or wherever they are. But I say, while we are engaged in making, not a legislative enactment, but a law for all time, a Constitution, which we hope is to endure, perhaps for centuries, we should be very careful how we word our legislation. After this war shall have been ended, and it shall have become a settled conviction that those who were engaged in it have returned in good faith to their allegiance, our Legislature may desire to overlook the past, and allow them again to stand among us as equals; for, if we do not take that course, we may never expect one of them, or their children, ever to be loyal again. We shall have thrown down the gauntlet, challenging them to continue their hostility to the government, and they will continue it. A feeling of hatred, a feeling that they are being subjected to persecution, will animate them. They will feel that we have put them down among the negroes and Chinamen, and refused to give them a chance to be good citizens again, on equal terms with ourselves, if they would be. I say, our adoption of that policy would strike like iron to the heart of every proud-spirited southern man in the Territory. They would say, and they would be right in it, that though they may have intended to become good citizens, yet they could not do it, because we have an odious provision of the Constitution standing there against them, and impending over their heads for all time to come. There is no encouragement for the evil-doer to repent. I would like to see the amendment defeated, and then I would like to see this whole section so remodeled as to leave out this proscriptive feature altogether, leaving the section to read in this manner:—

SEC. 2. No person who has been or may be convicted of treason or felony in any State or Territory of the United States, unless restored to civil rights, and no idiot or insane person, shall be entitled to the privilege of an elector.

I would not like to have that word "disloyal" left in as a constitutional provision. Then, after amending the section so as to read in that way, I would put in a provision that the Legislature may, from time to time, fix the qualifications of voters. I would be willing even to strike out all these other provisions—to strike

out "idiots" and "insane persons," if you please; and then, if we fear any evil results from permitting the elective franchise to disloyal men, we can arm the Legislature with power to prevent them from voting, until such time as in the wisdom of the future it may be determined that those men shall be allowed again to come into the fold as equals. But I cannot see any wisdom in tying up the Legislature forever in this respect, if we wish to reclaim these men and restore them to their former position of brothers.

I have as much cause as any man to feel irate and revengeful towards the Southern rebellion. I have met with my losses at its hands, and have as much reason to feel indignant and outraged in regard to it as any other man. But while I sit in this Convention, I will not forget my duties to the future on account of my passions concerning the present. I say I wish to see this Constitution so modeled that no man convicted of crime, or who is idiotic or insane, shall be allowed to vote in the present or in the future, and then I would leave the rest in the hands of the Legislature. If, when this war is over, we allow those who have been disloyal to share with us in the right of suffrage, and in all the rights of citizenship, as our equals, they may, and probably will become loyal citizens, or else the whole doctrine of the Christian religion is a mistake. The argument of the gentleman from Lyon, (Mr. Kennedy,) would be that this crime is of such a nature that no man can repent of the sin he has committed, and return to allegiance and loyalty.

Mr. KENNEDY. That is not my idea at all. I said they could not escape the penalty, and that is in accordance with the Christian doctrine, which asserts that Christ had to suffer the penalty for the sins of others, in order that they might themselves escape from suffering.

Mr. DeLONG. I was attempting to state only what I conceived to be the purport of the gentleman's argument—that he did not believe that those men who had willingly and actively participated in this rebellion were, or ever could become, truly loyal, and that he believed for generations hereafter their descendants would be imbued with this same spirit of disloyalty and hatred towards our Government. For my part, I look forward to no such state of affairs. I believe that this war will convince those men that there is inherent within our system of republican government, such immense power to enforce its own laws and protect its existence, that they will be compelled now and forever hereafter to respect it. I believe that they were led into disrespect towards our Government from a mistaken idea of its power, and that they are now convinced of their mistake, and, in my opinion, there would not to-day be left a corporal's guard of secessionists in the United States of America if they could only escape from the consequences of their rebellion and be restored to the same civil rights which they formerly enjoyed. I believe that they have become convinced of those two fatal mistakes which led them into the war—first, that the Northern men will fight; and, second, that they will expend their money, as long as they have got a cent of money or of credit, or a machine with which to make paper, in order to get the means to put down this rebellion and sustain the Government.

If they had only known these two things before the rebellion, the knowledge of which has cost them so dearly, there never would have been an organized rebellion in our Union. These mistakes are what underlaid the whole of it, and they are willing now to get out of it in any way they can, with the loss of everything but honor. That is my opinion, and I do insist, on behalf of men who I know are not reconstructed at heart, men who do desire to return to their allegiance, men who do desire to become good citizens, and to retrieve their past errors, that we shall not cast such men aside, and throw a shadow over their names, so that they may not hope, for long years to come, to stand fairly before their fellow men on the score of loyalty. I hope we shall not compel any man to remain disloyal. I desire that, if they will come in as good citizens, under that Amnesty Proclamation, and demean themselves properly, they shall not be reduced to a condition of vassalage, but shall be received as equals. But if this provision stands, they are branded and stigmatized, just as long as they are living and breathing men. I do not see why we should consider ourselves more wise or more patriotic than all who are to come after us, and should, therefore, refuse to allow the Legislature to determine who shall and who shall not exercise the elective franchise, so long as we take the pains to say that they shall not admit to the rights of suffrage any man who has been convicted of treason or felony, or who is insane or idiotic. And I do not see what benefit the Amnesty Proclamation would be to any white man, possessing the soul, and spirit, and pride of a white man, if by that proclamation he is to be merely relieved from the punishment inflicted upon the traitor, but not restored to any of the rights which belong to white men. I do not believe that that is the spirit of the proclamation, or that that is its intention. I believe it is intended to act like the pardon of the Governor of a State extended to a culprit in the penitentiary, restoring him to all his former civil rights. And if we had the power to run counter to the spirit of that proclamation, I do not think we ought to do it, but we should rather act in accordance and in harmony with the spirit of those who are high in power, administering the affairs of the nation.

Mr. EARL. I shall not, upon this question, detain the Convention long. I am glad to see that there is a spirit of liberality manifested here. I feared at one time that this proposition would be defeated, but I now feel that the way is clear again. I ask if it would not savor somewhat of State Rights doctrine if we here,

in the face and eyes of the Government, stand up and say that the Government has done wrong in extending its sentence to those men who have been engaged in rebellion. I think, for my part, it would savor strongly of State Rights. It would be one of those extremes which we ought to avoid.

Now, sir, in regard to the disfranchisement of these people, we have but to look at other nations. If you look at the history of Scotland, what do you find? They have become a thoroughly loyal people to the British Government, because, after they were practically subjugated, they were not borne down by the power of Great Britain, but were treated as equals. On the other hand, look at Ireland. As long as her people have left the spirit of men within them they will be constantly endeavoring to revolutionize, and the time may come when they will succeed. And why? Because they are and have been down-trodden by the British Government, just as the people of the South would be if we attempted to tread them under foot. Those people, so long as they had a spark of manhood in them, would resent it. I hope, if the section remains at all, that the Convention will not strike out the words proposed to be stricken out by the gentleman from Washoe, which would disfranchise them in every way. I would prefer to leave the whole matter to the Legislature, believing they would be better judges than we as to who should be admitted, from time to time, to the privilege of the elective franchise.

Mr. HAWLEY. I hold that all acts of the Legislature which can have no practical effect, are worse than superfluous. Now, sir, I submit to the gentlemen who have advocated the striking out of this paragraph which has led to so long a debate, what method can be adopted by the authorities to discriminate between those parties who have borne arms, and held civil and military offices under the Confederate Government, and John Smith, or John Jones, or any other individual? Is the State of Nevada to send Commissioners to the Confederate capital, to demand of Jeff. Davis's Adjutant General an inspection of the muster rolls of the Confederate army? Are we to send Commissioners to the several so-called Confederate States, and to demand of their respective Secretaries of State that our Commissioners be allowed to examine the commissions of all their several officers? The enactment, if it is an enactment, must, in the nature of things, prove inoperative. It would be a work of Herculean difficulty to achieve any results under an enactment of this kind, providing that the classes of men specified therein shall be deprived of the elective franchise. For that reason, if for no other, I think, with all respect to the gentleman who offered it, that this amendment should be rejected by the Convention, and that either the section should remain as it is, or the whole subject matter should be left to the Legislature of the proposed new State, in order that they may prescribe the regulations controlling elections, and determine who shall and who shall not exercise the elective franchise.

Mr. CRISMAN. I have but a few words to offer in relation to this matter. In the first place, I will state my position, which is this: I am opposed to any alteration of the Article before us. The first proposition of the gentleman from Washoe (Mr. Nounc) would not meet with my approval, for the reason that, in my judgment, it would be a violation of the principles of liberty and justice. The doctrine we started out with at an early day, the doctrine which we wish to carry out, is that those men who have been engaged in the rebellion have erred—that those men who have been shedding the blood of our brothers have gone astray, but that if they are willing to come back, and be good citizens, we are willing, or I am willing, at least for one, to forgive them, although under the circumstances, it may seem hard. It would be hard to see men coming up to the ballot-boxes whom we know are still traitors at heart; but we know that there are many who have sincerely repented. Doubtless there are many still in the rebel ranks who have repented, and who remain there, perhaps, from the force of circumstances over which they have no control. The progress of events may have forced them along until they found themselves in the rebel army. Some such men have got away, perhaps, as soon as they could, and now, if they are willing to take an oath of allegiance to the Government, I am willing to extend to them the hand of friendship. I think that humanity demands it. I think that that is shown to be the policy of our Government, and I think that we ought to extend our approval to that policy, if these men come among us. So far as relates to striking out the word "disloyal," I can see no necessity for it. If the Legislature is going to pass laws for the regulation of the ballot-box, they may provide a suitable oath for parties to take who are suspected of disloyal acts. The Article, as it stands, suits me, and I do not see the necessity for any alteration whatever.

Mr. TOZER. I hope the Convention will come speedily to a vote, and not upon the various questions pending before it. And, without discussing the matter further, or giving any reasons why and wherefore, I will only say that I hope the amendments will be voted down; and, if they are, I have prepared an amendment, in accordance with the suggestions of my colleague, (Mr. DeLong,) which I hope will then be adopted.

Mr. LOCKWOOD. I have not occupied the time of the Convention hitherto, and the state of my health will not permit me to make any extended remarks upon this question. But there seems to me, from listening to the discussion thus far, to be a disposition here to pander to the disloyal sentiment existing in the Territory. One gentleman tells us he is fearful that this Constitution will not be adopted if we do not amend this section. I, for one, like the

alone just as it stood, exactly. There has been a great deal said about justice. Justice to whom? A great deal has been said about Constitutional obligation. Obligations to whom? Justice and Constitutional obligations to the men who have been trying to stab to the heart one of the best Governments ever known in history? Have we so soon forgotten the brave men who have gone forth to battle for our liberties? Shall we so soon forget the new-made graves all along the banks of the Potomac and all over the South, that we should be over prompt to do "justice" to those men that are trying to stab the Government to the heart? If those men have proved to be traitors once, if they have, under certain circumstances, tried to destroy this Government once, what guarantee have we, I ask, that, under like circumstances, they will not attempt to do the same thing again? Who would be so inconsistent as to hire a thief to guard his treasure? I consider that the ballot-box is, as another has said, the palladium of American liberty, and I would guard it, and hedge it around in every possible way; and I believe that here in our organic act is the place to hedge it around; the place to build bulwarks for the protection of that sacred prerogative. We should provide that no one having even the taint of treason upon him shall be allowed to come to the ballot-box, side by side with us who have sustained the Government in its hour of darkest peril. We should not permit them to come up and vote with us. Shall they be permitted to govern this new-born State? Now, sir, you talk about justice. I feel, for one, that it is but justice to those brave men who have given all, even their lives, to their country; to those men who have fallen around Richmond like leaves in the autumn forest, that those who participated in this cursed rebellion should be forever excluded from the elective franchise. I know there are many loyal men in that section of our country, and some of them may have reached our Territory, but they are the exceptions to the general rule. I say that our ballot-box should be securely guarded, and controlled only by loyal men. I agree with the gentleman from Leader, [Mr. Warwick], as to the character of our immigration. I know of men here who are just from the rebel ranks; men who have served under Price, in Missouri, and if we leave the ballot-box open to that class, enough of them may come by and by to carry the election. I think if a man were ever so virulent a copperhead, he could scarcely show brass enough in his face to come out and attempt to oppose this Constitution for the reason that we have retained the word "disloyal" in it. I believe that it is good enough as it stands. I was not a member of the last Constitutional Convention, and therefore I can, with propriety, do that Convention the justice and the courtesy to say that I believe that clause as it stands is just what it should be, and I trust this Convention will leave it just as it is, voting all these amendments down.

Mr. KENNEDY. The objection is made here to the use of this word "disloyal" that it is vague and impracticable, and to meet that objection, I desire to read one section from the Constitution of Vermont, as it was passed in 1793:—

SEC. 2. Every man of the full age of twenty-one years, having resided in this State for the space of one whole year, next before the election of representatives, and is of a quiet and peaceable behavior, and will take the following oath, or affirmation, shall be entitled to all the privileges of a freeman of this State.

Now, since 1793, they have had no trouble in Vermont in making that language practicable. Have we in this State less sense than the people of Vermont, so that it is impossible for us to make this provision, in regard to the disloyalty of persons, something that shall be of practical benefit?

The question was taken on the amendment offered by Mr. Nourse, to strike out the words, "unless an amnesty be granted to such by the Federal Government," and the amendment was not agreed to.

The question recurred upon the amendment offered by Mr. Dunne, to strike out the word "disloyal."

Mr. TOZER. I move, as a substitute for the section, the following:—

SEC. 2. No person who has been or may be convicted of treason or felony in any State or Territory of the United States, unless restored to civil rights, and no idiot or insane person shall be entitled to the privileges of an elector. And the Legislature may by law determine for what other reasons or causes any other class of persons than those mentioned shall or may be disqualified from exercising the elective franchise.

Mr. WARWICK. For the same reasons, sir, that I opposed the first amendment offered this morning, I oppose the present amendment. I am adverse to the idea of striking out that portion which I read this morning, and which is the portion, above all others, of this section that I desire to see incorporated in the organic law that we are now about perfecting—that portion which reads as follows:—

No person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government.

Until such time as that treasonable act shall be covered by the Amnesty Proclamation, to which we all look forward for the peaceful and triumphant solution of the war, I desire to exclude those who have been guilty of treason from participating in the elective franchise. I know it is said to be noble to have a giant's strength and yet not use it like a giant. But I contend now, as I contended this morning, that every principle of self-preservation demands that this section, above all others, should be incorporated in our organic law. Why is it that gentlemen now, in this our hour of peril, while we are battling for the life of the nation, desire to have men whose hands are red with the blood of our fathers, and brothers, and sons,

come in, and share with us in the elective franchise around that sacred palladium of freedom, the ballot-box? Why do they desire to have this provision stricken out, which, above all others, is the imperial safeguard of our rights? What is it we ask? Simply that those who are engaged in rebellion now—not those who have been impressed; not those who, under a conscription act have been compelled to bear arms, whether willing or not—should be excluded. But the man who can stand up and say, "I have not willingly borne arms against my country—no, I was forced into the ranks, and I repent my action," is not excluded. This provision does not cover him. But gentlemen are not satisfied with that. They claim that all the others should be allowed to come in—that though their sin be as scarlet, yet shall they be as white as wool. Now all I ask is, that those who voluntarily went forward and raised their sacrilegious hands against the Government—those who have sought to tear it down; those who have struggled to murder it, when the life of the nation was trembling in the balance; those who willingly went forward—not those who were compelled to join in that treasonable work—shall be excluded from the elective franchise in the coming State. Why, here we are surrounded with rebellion. It is well known that there is no State or Territory in the Union which has become so much a harbor of refuge for secessionists as Nevada and California. As a gentleman who preceded me remarked, it is here they fly as to their city of refuge. In my own county of Lander, I know that treason is blatant in almost every hamlet and village. Therefore we ask that this provision be incorporated in our Constitution, whatever else you see fit to strike out. We do not ask that those who have been forced into the ranks of rebellion shall be excluded from the ballot-box, but those who have voluntarily borne arms; those who have contributed to aid the rebellion—from whatever motive; whether it be southern cupidity, or southern pride, or hatred of northern institutions—all those men who have voluntarily sought to overthrow the Government, at least until that Government be placed again upon a stable foundation. Let us use every means in our power for the security of our liberties, and our rights.

Now, then, the proposition made here, to strike out those words, "disloyal persons," it seems to me, ought to cover every ground of objection. The only objection raised is, that the words are vague, and that it would be almost impossible to define the character of the offense. We know, as has been stated on the floor of this Convention, that men differing in opinion, whose loyalty is like the virtue of Cæsar's wife, not only pure but above suspicion, have been charged and re-charged with disloyalty, although those charges have no more weight than that of a feather in the balance. Therefore, as the offense is undefinable, and as there would be no possibility, under this provision, of arriving at just conclusions, I am willing to see those words stricken out, but I trust that the original section will remain otherwise just as it was adopted by the Convention of last fall, leaving in the provision excluding those who have voluntarily borne arms against the Government.

That provision humanely sets a limit in regard to age. The boy of sixteen can scarcely be considered as accountable, and the provision extends only to those who have been in the rebellion after arriving at the age of eighteen years. How merciful the provision! He shall be a man with an intellect capable of judging between right and wrong—not a child stolen from his mother's side, or a lad misled by the example and influence of bad companions, who rushes headlong into the fight. But if he is a man capable of judging between right and wrong, and if he has voluntarily sought to destroy this Government, then all we say is, not that any great punishment shall be inflicted, but simply that he shall not share with us in the elective franchise, until such time as an amnesty proclamation shall have washed away his fearful crime. I think that when this question comes to a vote, this Convention, owing to the vagueness of description in the word "disloyal," will be willing to strike that out, and will then insist that the remainder of the section shall stand as originally incorporated by the former Convention.

Mr. NOURSE. I desire to make one remark. I think the gentleman who has offered this amendment hardly noticed how wide is the door it opens. Under it the Legislature may exclude any person under heaven. It may exclude gray-headed men, or, far worse for some of us, it may exclude bald-headed men, or anything of that sort. [Laughter.] It seems to me that the gentleman who offered the amendment will hardly insist upon it when he finds that it opens the door so as to permit the Legislature to exclude any class of men it pleases.

Mr. BANKS. The proposition offered by my colleague, (Mr. Dunne,) is one which has been very fairly discussed here, and I do not propose to repeat what has been so ably said by others upon that proposition. I will simply say that I am in favor of striking out the word "disloyal," on account of the indefiniteness of that word, at least in the opinion of the very authority by which its meaning would have to be determined—to wit, the members of this Convention.

But there has been introduced here, by the gentleman from Storey on my right, (Mr. Toner,) an amendment which embraces propositions which I conceive to be most dangerous, if they are not altogether foreign to the institutions of our country. His proposition, narrowed down to a few words, may be thus stated: He proposes that the Legislature, by a majority vote, may determine who shall and who shall not vote—who shall and who shall not exercise the greatest of American privileges, the right of

the elective franchise. Now, without entering into anything which may be regarded as the philosophy of this question, let us view it in the light of the practical affairs of life, as we see them around us every day, and inquire how the thing will work in practice. At one time, by means of those agencies which politicians know so well how to use, popular sentiment may be aroused; unphilosophical political doctrines may be promulgated, and, for the time, the popular ear may be controlled by them; the popular mind may be deceived; and the popular heart may be made, for the time being, if not altogether wrong, at least to move in a wrong direction. Take an instance which is within the memory of all. I recall the time when men, from the press and the pulpit, and other prominent points, began declaiming against our citizens of foreign birth, and in time a dangerous sentiment was aroused, to such an extent that had a Legislature then met, possessing the power which this amendment proposes to confer, of deciding who shall and who shall not be permitted to vote at our elections, all that class of our fellow-citizens would have been excluded from the exercise of the elective franchise. Now, sir, I ask, with our present feelings upon that subject, would we be willing to have any such event happen in our Territory? I hope the right to exercise this high prerogative will be so fixed in the Constitution that passion will not be able at any time to exert such an influence upon it as it might do under the provision which this amendment proposes to place in our Constitution. I see no difficulty in allowing the section to stand as it is, with the word "disloyal" stricken out. We shall then leave our Legislature to be guided by a certain rule, and all persons who have raised their arms against the Government will be excluded until that Government sees fit to pardon their offenses. We then secure every advantage to be derived from such persons becoming repentent.

We all know that men judge more wisely as they grow older. I have myself, in common with many others here, stood on the stump, and acknowledged with shame—aye, with burning shame—that I once trained in the ranks of the Democracy, and proclaimed slavery to be a divine institution. I was willing at one time, as others were, to march in those ranks, and to maintain that doctrine. But we feel that we were monstrously wrong in the position which we then held, and in our declarations of what we were willing to do in an emergency in defense of the principles which we then believed in, and we now repent of that wrong. Now if you or I, Mr. Chairman, at the outbreak of this rebellion, had belonged to the State Rights party, and had lived in the South; if we had been roused to enthusiasm in the support of those principles, in which we fully believed, who knows but we, too, might have raised our hands against the Government of our country? We might, perhaps, have been promoted to positions above that of the rank of Colonel, and then we could not even have come in under the provisions of this part of our Constitution.

Now, in view of all the circumstances of the case, in view of what we know of human nature—that men may be thoroughly wrong one day, and at heart and in principle right the next day—in view of the past history of our country, in view of what we know in regard to the danger likely to arise, why should we give the Legislature the power to determine that no one who is not a gray-headed man, or a bald-headed man, or any other description of a man they please, shall be allowed to vote, or that the volunteers, or any other class of our citizens, shall be excluded from that right? In view of the dangers, I say, arising from human passions exercised in that way, I do hope that we shall adopt no such monstrous provision as is contained in this amendment, allowing a temporary majority in the Legislature to control so important a matter.

Mr. FRIZELL. I rise to make a few remarks in support of the amendment offered by my friend and colleague from Storey, (Mr. Tozer.) Gentlemen will perceive, by close attention to the section, as proposed to be amended, that everything which properly belongs to a constitution, or which should be fixed in a State constitution, in this regard, is contained in that amendment. The amendment reads in this wise:

"No person who has been or may be convicted of treason, or felony, in any State or Territory of the United States, unless restored to civil rights, and no idiot, or insane person, shall be entitled to the privilege of an elector," etc.

All that, in the middle of Section 2, as printed, which applies or relates to disloyal persons, is omitted from this amendment, and left entirely to the Legislature of our future State of Nevada. I think that is the proper course, and I will proceed, in my feeble manner, to tell you why I think so. Gentlemen are aware that I have made but few remarks in this Convention, owing to indisposition, and I am scarcely able to address the Convention now. As to the rights of the different States in the regulation of the rights of suffrage, it will be observed that the different States have taken quite different action upon this subject. In some States, as has been remarked by the gentleman from Washoe, on my left, (Mr. Nourse,) colored men have been allowed to vote; in other States, again, the statutes have required a property qualification; and in still others, the Legislature have required men to pay a poll-tax, as a prerequisite to the right of voting; but none of the requirements or measures advocated by gentlemen, so far as I have examined, have been inserted in the Constitution of any State. Another particular reason for leaving this subject to the Legislature, is this: that the very nature and course of this rebellion may, and probably will, take different shapes and shades every year, and what form it may ultimately assume, we cannot foresee.

Now, the gentleman from Humboldt who last spoke [Mr. Banks] referred to passion. He said that the Legislature might be actuated by passion. But we meet here in the most critical period, as I look at it, of the rebellion, and we propose now to fix, and establish, and stamp, a law in our State Constitution that is almost irrevocable—a law which is to govern in all future times, notwithstanding the fact that this rebellion will inevitably take different shades from year to year. I certainly think it would be better to leave it to the Legislature. Why should not a Legislature of the State of Nevada, a great State, as we hope it will be in the future, coming up fresh from the people, be the proper body to refer such a subject to? It may be larger in numbers, and even a more intelligent and dignified body than this Convention, and why should we be afraid to entrust our rights to such a body?

If we refer back, Mr. Chairman, to the history of other nations, to the civil wars of England, to the wars of the Roses, or the wars of the Long Parliament with James or Charles, we will find that after once the wars had closed the difficulties were healed up and forgotten; and that there was no persecution against those who had been in arms. Now, I hold that anything like this in our State Constitution would be persecution. I say, let the rebels be punished if the Federal Government sees fit, and to the extent it sees fit, but do not persecute; and I appeal to you, Mr. Chairman, whether you ever know of any sect, political or religious, which was persecuted for its peculiar tenets, but what that sect increased and prospered? I say, then, punish, but do not persecute. Leave the door open for the rebels to return to their allegiance, and leave it to the Legislature of our future State to regulate, from year to year, this subject of the elective franchise. I do think that this poison of secession, spoken of by the gentleman on my left [Mr. Nourse], as being infused in the veins and vitals of the Republic, can be eradicated, and that the best way to eradicate it from society would be to leave those men a chance to return, and not persecute them. If this matter is left to the Legislature, they could shape a law or laws, from time, to time, to meet the case in all its phases.

Mr. COLLINS. I do not feel at liberty to allow this subject to come to a vote without saying a few words in regard to it. I think that the amendment proposed by my colleague [Mr. Toner] covers the entire ground. It leaves the question entirely at the disposal of future Legislatures to meet any of those extraordinary emergencies that may arise, requiring action such as this section contemplates. This original section proposes to proscribe men who have borne arms against the Government, or who have held office, either military or civil, under that Government. But I do protest that we ought to be very cautious about incorporating into our organic law any section, clause or phrase, that shall point continually to any particular class of men, or that, in its operation, shall conspire constantly to excite their hostility, awaken their pride, or arouse their passions. We do not wish to excite men to hostility against the State, but rather to beckon them on to a better and higher condition. I am fully confident myself—and I believe that I have about as much of human nature in my composition as most men—that if I were compelled to stand proscribed, by my position in any community, I should feel it a constant challenge to excite my hostility. The sense of persecution and wrong would be constantly awakened within me, and I should be induced to try to enlist the feelings and sympathies of my neighbors and associates, to incite them to unite with me, "like kindred drops in one," in carrying out the perpetual antagonism which would be aroused in my own breast. That, I believe, would be the ordinary impulse of human nature.

Now, I say, let this rebellion be put down. Let all the force at the command of the General Government be employed; let the backbone of the rebellion be broken; let the authority of the nation be maintained; let the leaders of the rebellion be strung up between heaven and earth, expatriated and imprisoned, and their property confiscated. But when that shall be done, let the hatchet be buried, and let those who have been the subordinates and dupes of those rebel leaders be friends with us again. It is not, or should not be, our object or intention to devise any ways or means, or to enact any provisions, by which this spirit of antagonism or hostility shall be constantly intensified. We should, rather than aggravate, seek to conciliate, so that when the asperities of the war shall have passed away, the animosities it has engendered may be forgotten, and we may be once more brothers and friends, instead of cherishing against each other a spirit of perpetual antagonism. When the war is ended, let the prejudices and passions which it has awakened into life be buried forever.

Gentlemen talk about the passions of the Legislature. Is there a probability, I ask, that the passions of the Legislature in the future will be more excited on this subject than our own passions now are, when our hearts are bleeding afresh with the losses we have sustained of fathers, and brothers, and sons, whose bones are bleaching on southern soil? As we pass through the country and see whole families in the weeds of mourning, as we look upon the dark cloud of sorrow and suffering which has spread over the land, can we help thinking that if there is any time in the history of the war at which men are liable to be excited by passion, it is the present moment? I would warn gentlemen of the Convention not to allow themselves to be governed by that excitement and passion which now prevails. I know it is popular to rail and to proscribe, but I have myself seen too much proscription from

the very party which has brought this war into existence, not to understand and recognize the danger of proscription, and the want of sound judgment and philosophy in those who would advocate it. No! The proper time for this proscription, if we must have it—and I do not know but the future will demand it—will be when the occasion shall arrive. If the rebels in this Territory, or State as it is to be, shall conspire together to overthrow the Government, and endeavor to plant their feet upon the neck of freedom, then it will be time enough to use the means which the proposed amendment to the Constitution gives us, for our own protection.

And, by the amendment offered by my colleague, the Legislature will have full power to adopt this policy of proscription. God send that the occasion may never come! I have full faith to believe that when the rebellion is crushed, as it may be at an early day, the loyal sentiment of the country will be ample to absorb and control the hostile element. I believe that those men who are now contending against the Government, when they shall cross the mountains and the plains to this State, will become as firmly convinced of their wrong as we now are—that their suffering, and self-denial, and poverty, will be a lesson that will teach them to appreciate the blessings of free institutions. And when they mingle with us, and find that we receive them in a liberal spirit, that the right hand of fellowship is not withheld, I do believe that there will be no difficulty in moulding them into good citizens. Having full faith in this moral power, in the efficiency of free principles, in the efficacy of free schools, and in the power of this free people, with its intelligence, its industry and its energy, I am confident that we shall be more than equal to the absorption of all of that rebellious element which may come among us.

A little buncombe has been introduced by some gentlemen who have spoken on the other side, to the effect that if this amendment shall be adopted, as introduced by my colleague, the Legislature may exclude from voting the bald-headed men, or gray-headed men, or, perhaps, the red-headed men, which I suppose would include my friend from Humboldt. [Laughter.] They tell us that there is danger of such classes of men being proscribed. Why, if gentlemen will read the first section of this Article, they will find that this difficulty is all made clear. I will read it, for the benefit of those gentlemen, that they may know that they are entirely mistaken, and that the Convention may see that this argument is merely for buncombe, and nothing more:—

SECTION 1. Every white male citizen of the United States, (not laboring under the disabilities named in this Constitution,) of the age of twenty-one years and upwards, who shall have resided in the State six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now are or hereafter may be elected by the people, and upon all questions submitted to the electors at such election.

Then comes in this section, proposed by my colleague, to be amended so as to read:—

SEC. 2. No person who has been or may be convicted of treason or felony, in any State or Territory of the United States, unless restored to civil rights, and no idiot or insane person shall be entitled to the privileges of an elector, and the Legislature may, by law, determine for what other reasons or causes any other class of persons than those mentioned shall or may be disqualified from exercising the elective franchise.

Now, I would like to invite the serious attention of the Convention to another matter, and that is, the entire impracticability of this section, or clause, proposed to be stricken out. I want gentlemen to look at it carefully. It is generally admitted, by the members of the Convention, that the word "disloyal," in that last clause, shall be stricken out. And why? Merely because it is so difficult to decide as to who is disloyal. A man may have been disloyal last year, and to-day he may be exceedingly loyal. Why, sir, I can remember, twenty, twenty-five, or thirty years ago, that when a man dared to stand up, in the Northern States, in New England, in New York, in Ohio, in any of the Northern States, and declare that he believed slavery was wrong, that it was contrary to every principle of republican government, and to the teachings of the Gospel, those very men, who now are the loudest and most earnest in their hostility against slavery, the most earnest advocates of the war, the readiest and firmest supporters of the President and of the Emancipation Proclamation, were then the readiest and most eager to throw addled eggs at the man who declared those sentiments. Do they entertain such feelings now? Certainly not. And why? Because circumstances have transpired to change the prevailing sentiment, and the sentiments of men have therefore been changed, so that those men are to-day among our best and most devoted Union men. Then, I say, are we to shut down and close forever the gates against future repentance? Sir, I know of men who have been earnest secessionists, men who have been zealous enemies of the Government of the United States, who have already seen their folly, and who now stand, shoulder to shoulder, defending their country against the assaults of rebellion. I ask whether there is to be no door of escape for them? Are they to have no hope? Are not the power and force of free principles, and the power and force of the arms of the Federal Government, equal to the task of converting and persuading them to a better life, and to good citizenship? My faith in the good that is in men, and in the power of justice, is such as to lead me to rely on that good and that power.

My friend, the gentleman from Lyon, [Mr. Kennedy,] has attempted to arraign the good old State of Vermont, and has brought her Constitution here, when the argument of impracticability was presented in regard to this word "disloyal." He says that certainly if such language was good enough for Vermont, it will be good enough for us. Now, I have to say that I

have a little knowledge of the history of that State, and I know the trouble, perplexity and annoyance that the people have suffered under that provision which he has read, on account of the charges which bad or over-zealous men have brought against those whom they desired to proscribe. For nearly twenty years the citizens of Vermont struggled earnestly to that end, and finally, in 1828, they succeeded in changing the Constitution in such a way that that ambiguity and trouble was entirely removed.

Mr. KENNEDY. Did they change that clause?

Mr. COLLINS. They did change that clause.

Mr. KENNEDY. It does not appear to have been changed in this published volume of "American Constitutions."

Mr. COLLINS. In Vermont, in 1828, the Constitution was amended as follows:—

No person who is not already a freeman of this State shall be entitled to exercise the privilege of a freeman, unless he be a natural born citizen of this or some one of the States, or until he shall have been naturalized agreeably to the Acts of Congress.

Mr. KENNEDY. That has no reference whatever to the clause which I read.

Mr. COLLINS. That is the article on the right of suffrage. I would ask the gentleman how it is possible that this language can be of any service; and I will read that portion of the section proposed to be stricken out, in order that we may look at it squarely in the face. If it can be of the least possible service, if it will add one iota to the strength of the Government, I would be willing to incorporate fifty pages against rebels; but I do protest against incorporating in our organic law anything against rebels, or against the rebellion, unless it be shown that there is an absolute, pressing and urgent necessity upon us for doing it. Let us look at this language:—

And no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States Government, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government.—

Now, in the first place, I ask what Court is to be raised to try those men? For I contend that it will be incumbent upon the Convention to establish a Court by which this whole matter shall be adjudicated. What Court is going to decide it? An immigrant comes over, and Madame Rumor, with her thousand tongues, proclaims that the man was in the rebel army, or that he held an office under the civil government of the rebellion; and how are you going to prove it? As my friend from Douglas has asked, are you going to send a Commissioner to the Capital of the Confederacy, (and where that Capital is to be next year or next month God only knows,) and there to ascertain whether John Jones or Richard Williams, or any other man, has ever borne arms under the Confederacy against the United States? And suppose it to be true, how is it to be adjudged, or how are you going to prove it? How are you to know his age? The young man may say "I was only fifteen years of age," and there is another question to be brought out on proof. He may say that he went into the rebel ranks involuntarily; that he was conscripted and forced into the rebel army.

And when you have proved all these things, I ask what then? Allowing it to be possible that such a thing could be proved, what then? Why, you might chance to fall upon one of the very best Union men in the State of Nevada, who may be laboring shoulder to shoulder with you to sustain this State, and to uphold the Federal Government. He may be one of the most earnest Union men we have, and he may be assailed, while there are hundreds and hundreds of others who may be indifferent or opposed to the Government, whom you cannot bring to the bar. Thus the Union man may suffer disfranchisement while those others escape. I tell you it is a dangerous instrument of power. It is a dangerous declaration to insert in our organic law, when we are liable to do so much injury to individuals by means of that declaration. I say it were better to let ten secessionists escape, than that, in the future, one Union man should suffer at our hands. Now, the proposition is, to leave this matter to the Legislature; that is, to the bodies of men who come directly up from the people, chosen to deliberate upon the wants of the State; to those men who know precisely what the wants of the State are.

But I will trespass no longer upon the Convention, as I am courteously informed by a friend here that I have already spoken over fifteen minutes.

Mr. DELONG. I think there is no limit to the debate, as to time, in the Committee of the Whole.

Several voices—"Go on!" "Leave!" "leave!"

Mr. COLLINS. I desire only to say that the Legislature is the proper body to take this matter into consideration; that it is better qualified for it than we are. One gentleman—I think it was the gentleman from Humboldt, (Mr. Banks,)—has suggested that the Legislature would be excited and impassioned on the subject. As I said before, we are the body that is most likely to be excited and stimulated by passion. I want nothing incorporated into the Constitution that is not absolutely necessary. I consented, yesterday, in that section relating to paramount allegiance, to allow a gloss to pass upon the Constitution of the United States, after we had adopted it as a whole. I was willing that the meaning might be clearly expressed, because I thought it might do some good, and certainly could do no harm. But I am decidedly opposed to employing in the organic law of the State any language which is not really necessary, and which may conspire in its operation to do immense harm to individuals. I do not see how this language can possibly do any good. I believe that when this rebellion shall be overcome there will be a

general reunion and sympathy of feeling all over the North and the South. The people of the South will feel that the people of the North are of a different character from what they had been led to understand. They have had the impression, as my colleague, (Mr. DeLong,) has said, that Northern men would not fight. They have imagined that the Northern people were composed of a class of men in whose pockets every sixpence would stick, as if made of putty or dough; that they were too mean to spend their money to defend their free institutions. But they have been convinced thoroughly in this war—first, that the North will fight; and, second, that they will pour out their money like water to defend their liberties and their rights. And when they shall have been thoroughly and completely overcome, they will acknowledge their condition. They will cry for peace, and they will freely harmonize with the men of the North, and of the entire nation. They will be glad to coalesce and cooperate with you, and endeavor with you to build up a government of which they will themselves be proud. They undoubtedly possess a spirit of patriotism, although instead of being expanded so as to embrace the whole nation, it is now confined to their particular State or their particular section. But they will hereafter transfer that spirit from the State to the nation, and will be as ambitious of the glory of the nation, and as proud of its prosperity and greatness, when a few years shall have passed away, as you are.

I remember that a few years ago there was a great war between the cantons of Switzerland. While that war raged, the people of those cantons were brought into antagonism, and as strong passions were excited, and as strong prejudices aroused, it seems to me, as ever have existed between the North and the South. But when the Northern cantons overcame the Southern cantons, and peace was proclaimed, then universal harmony was soon reestablished, and now you can hardly see the scars of that great gash that almost severed the country in twain.

I remember being in Ireland just before the last insurrection, and, in consequence of my acquaintance with men in that country, when that rebellion did break out, I watched its progress and history with earnestness. When the British Government had overcome those who had taken up arms, and Meagher, and Mitchell, and others were convicted, and sentenced to be drawn and quartered, the Government having fully vindicated its authority, that sentence was commuted to banishment to New South Wales, and a general amnesty was proclaimed; no man, save a few of the leaders, being proscribed. Now I ask any gentleman, if Ireland is less loyal to-day, in consequence of that leniency?

I remember, too, the history of the whiskey rebellion, in Pennsylvania. When Washington ordered out troops to subdue the insurgents, and when that rebellion had been put down, and the authority of the Government reëstablished, there was no trace of bitterness left. The Federal Government, having sustained the law, has proclaimed that all under the rank of colonel, if my memory serves me correctly, who should come in, in obedience to the proclamation, and take and subscribe an oath of allegiance, should thereby be absolved and purged from all taint of treason, and thereafter entitled to all the rights and immunities of citizenship, the same as if they never had been rebels. That is what is done now, right in the heart of the rebellion. Right in the midst of it, while the graves of our soldiers are yet green, while their bones on the battle-fields are yet whitening, while the weeds of the widow, and the orphan, and of the aged parent, bereft of support, are yet to be seen all over the free States; in spite of all this, the Government has issued that proclamation. If they could do it there, I ask, how much more should we do it here—three, four, or five thousand miles removed from the scenes of strife—where only a few stragglers reach us, now and then, across the rocky mountains, and alkali flats, and arid and desolate plains.

I ask, how should we receive them? Should it be with the unfriendly greeting—"clear out, you worthless devils, we know you not?" Rather let us say,—"we know your folly, and your wrong-doing; yet, notwithstanding, if you come here to work with us, to cooperate with us, as true and loyal citizens should, you shall be received into all the rights and privileges of citizenship; but if you do not, there stands a provision in our Constitution by which our Legislature is authorized to proscribe and drive you from the polls, and deprive you of citizenship." I ask if that is not a thousand fold better than it would be to foster captiousness and strife, and to legislate here as if this rebellion was to exist for all time to come?

And when this rebellion is put down, if we adopt this policy, it will not be planted merely to sprout up again, like the heads of Hydra, if you cut off one of which, ten others would spring up anew in its place; but when once it is put down, it is put down for all time in the future. Its memory will be a monument for all coming ages to look back upon, and when men regard its history, they will tremble at the might and majesty of that Government which unsheathed the sword, and put down a rebellion of such power and magnitude as this which is now raging.

I ask the Convention to look at this Constitution as an instrument which will go down to posterity. You, and I, sir, may die, but this Constitution never. I ask, then, if this immortal instrument shall be so framed as hereafter to be pointed out to every man who crosses the plains, who has been in the confederate army, although he may be now as good a Union man, and as devoted a republican as you and I—I ask if this instrument shall point at and

fix a brand and stigma upon him? Is it for the good of our State that that provision should remain there? I trust that the Convention will look at this matter earnestly, and without passion, and then decide according to its best judgment.

[The PRESIDENT in the Chair.]

Mr. KENNEDY. I desire to make a personal explanation. I have read a section from the Constitution of Vermont, and the gentleman from Storey, who has just taken his seat, seems to think that that section has been repealed. I wish, in order that I may be placed in a proper position before the Convention, to read the two sections which have been referred to. The first section to which I referred and read, was Section 21 of Chapter II, which reads as follows:—

"Every man of the full age of twenty one years, having resided in this State for the space of one whole year next before the election of representatives, and is of a quiet and peaceable behaviour, and will take the following oath or affirmation, shall be entitled to all the privileges of a freeman of this State."

The article which the gentleman refers to as repealing this section, is an amendatory article, adopted in 1828, and reads as follows:—

"No person, who is not already a freeman of this State, shall be entitled to exercise the privilege of a freeman unless he be a natural-born citizen of this or some one of the United States, or until he shall have been naturalized agreeably to the acts of Congress."

That amendatory article simply provides that a citizen shall not be made such without naturalization, and has no reference to the section which I previously cited.

Mr. FITCH. It was not my purpose, Mr. Chairman, to have occupied the time of this Committee in the consideration of this section of Article II, but, inasmuch as the debate has taken a turn unexpected to me, and inasmuch as a portion, and a large portion, of the delegation from Storey County, of which I have the honor to be a member, have assumed a position upon this question unlooked for by me, I feel myself called upon, in order that there may be no mistake about my position, at least, to say a few words upon the subject under consideration.

I most heartily approve, sir, of the action of this Committee in refusing to strike out the words "unless an amnesty be granted to such by the Federal Government," which was the amendment proposed by the gentleman from Washoe, [Mr. Nourse,] and voted down by this Committee. I most heartily concur in the original amendment of the committee, proposed by the gentleman from Storey, as amended by the gentleman from Humboldt, providing that the word "disloyal" shall be stricken out. But, sir, I can hardly agree, in any particular, with the views recently advanced by my colleague from Storey, [Mr. Collins,] with a force which I cannot hope to compass, and an eloquence which I cannot hope to emulate. I think that gentleman is filled with the milk of human kindness to an extent which certainly does not animate my bosom, at least. I am not in favor of holding out inducements to persons who have been disloyal to the United States, and have been in the service of the Southern Confederacy. I am not in favor of holding out inducements to that class of men to immigrate to this Territory, or State. So far as the word "disloyal" is concerned, I am in favor of striking it out, because I think it would be inoperative. For, if a man who was challenged on the ground of disloyalty, swore his vote in, you would be compelled to convict him of treason before you could convict him of perjury. But, on the other hand, a person challenged for having been in the rebellion, and not pardoned by having brought himself within the provisions of the Amnesty Proclamation, could be convicted for illegal voting. It would be only necessary to prove on the trial that he had been in the Confederate service and had not been included within the terms of the proclamation—a thing probably easy enough to prove, because those who had been in the United States service, or who knew sufficient of the facts to authorize them to make a challenge, might have all the information necessary to prove those facts.

Now, sir, I am opposed to leaving out this clause. I am opposed to leaving out the words which provide that "no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States or held civil or military service under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government," shall be entitled to the privilege of an elector. I am strongly in favor of keeping those words in. It is my opinion that it would not be wise or good policy to strike them out; I do not think it would be just to the Union party; in my opinion it would not be just to the loyal soldiers of the United States. I do not think that, in that view, I am unjust to any persons who may desire to become citizens of this State; and I do not think the accusation of buncombe will properly lie against a proposition of this nature.

Why, sir, not for the purpose of awakening prejudice, but for the purpose of calling the attention of gentlemen to facts which are passing immediately around them, almost under their eyes, I would refer gentlemen to the condition of things in the Atlantic States to-day. We find that, while we are discussing these questions here, a million of men—our brothers, our fathers, and our sons—are in front of Richmond now, under command of Grant, or in Georgia, with the army of Sherman, freely laying down their lives, being slain by hundreds and thousands, for the defense of our Government. And it seems to me when, in times like these, in times of revolution, we are engaged in framing an organic law for the youngest, and what we hope will be among the proudest and most prosperous of the States, we should be recreant to duty if we failed to express, in some unmistakable way, our reprobation of

those men who are doing all they can to destroy that Government which our kindred are defending, and our approbation of the men who are so gloriously upholding the flag and the Government of the United States. Why, Mr. Chairman, we might go through the Northern and Western States, to-day, any one of us, and when we witnessed the scenes of poverty and suffering which are transpiring all over those loyal States, in consequence of the sacrifices which their people have undergone in behalf of their country, we should feel, perhaps, like doing more and saying something stronger in reprobation of the men who have brought on and are now conducting this rebellion. There is scarcely a household, from Maine to Minnesota, from Lake Superior to the Ohio River, over whose threshold the beating wings of the angel of death has not passed; not a family but has given up some member to the cause of their country. There is not a State, nor a county, nor a school district but has suffered immensely, in life and in treasure, in consequence of this most inexcusable, most damnable rebellion—not one, sir. And shall we, stationed here, removed far away from all the suffering and sorrow, fail to express at least our reprobation of the men who have caused that suffering and sorrow? Shall we fail, Mr. Chairman, to insert in our organic law a provision disqualifying those men from becoming citizens on an equality with us, unless they shall first have been pardoned through an amnesty granted by the Federal Government? Why, sir, we scarcely know the amount of suffering which is endured by our fellow-citizens in the East. We have no conception of it. I do not speak alone of the men who have gone down to battle and to death before Richmond, or the men who, on other Southern battle fields, have spilled their blood in the defense of their country, but I speak of those whom they have left behind—of the children made fatherless, and the wives made husbandless. I tell you if we could travel over that land and see the suffering there, we might be induced to place in our Constitution even a stronger provision against the men who have caused this suffering to be brought upon the nation.

I disagree with my colleague from Storey, (Mr. Collins,) upon another proposition. He is of the opinion, sir, that when this war is over, when the armies of the rebellion shall have been entirely crushed, when the federal flag shall wave in triumph over every portion of the rebellious territory, then those men who have been in arms three years, battling against the Government of the United States, doing all they could do to destroy the lives of our soldiers and overthrow our government, are going to be converted into the best kind of citizens—that they will lay down their arms, and suddenly become the best and most loyal of neighbors and citizens. I believe the thing is impossible, sir. I very much mistake the character of the men—not only of those who instigated this rebellion, but those who are conducting it—if they do anything of the sort. There may be some hungry ones, and a few tired ones, perhaps, and it may be that a considerable number of such will take that course; but I think, as a general rule, that we shall be compelled, to a certain extent, at least, to denationalize the whole southern country, to colonize and fill it up with a northern emigration, to infuse loyal blood into the veins of the people, before we can ever hope that they will return to the Union and be what they were a generation ago. The men who have been beaten in battle are, to a certain extent, humiliated, because they have had their power destroyed. But if you restore them to civil rights immediately, and visit them with no punishment, and if you give them the right of suffrage unconditionally, I think there will be danger of a renewal of the trouble. I do not know what the policy of the Government is to be, in the States in rebellion, but I think I see, in the adoption of such a policy as my colleague recommends, the seeds of future outbreaks, and cruel warfare for years to come. I tell you the only way is to carry the war out to the bitter end. We have got not only to destroy the rebel armies, but, to a certain extent, to expatriate the whole population, and fill the country up with loyal northern elements, before we can do anything with that people. Those are my ideas, in contradistinction to those of my colleague. Why, Mr. Chairman, the idea that the man who has been in the service of the Confederate States should immigrate here to the western side of the Rocky Mountains, and, without a single expression of disapprobation, should be allowed to exercise the rights of citizenship; that we should be so tender-spirited, so kind-hearted, so generous, so unwisely magnanimous, that, not even in framing our organic law, will we adopt a provision telling him that he has done something wrong for which he deserves to lose all, but that we still will not deprive him of the rights of suffrage, provided the General Government will grant him an amnesty—that we should be so generous and tender-hearted, and careful of the feelings of traitors, as to avoid all allusions to their treason, is an idea which does not meet with my approval.

Sir, I, for one, am not in favor of extending so much consideration as that to those who have tried their best to destroy the Government. I am not so filled with the milk of human kindness. I have too great and too recent a sense of the depredations which have been made upon my kindred and my country. I remember how Ellsworth took his young life in his hand, and on behalf of liberty, like the noble Roman youth, leaped into that yawning gulf which closed upon him forever; I remember the grand devotion of the noble soldiers in the West, and how every banner in Missouri is draped in sable, and every bird seems to sing a song of sorrow for Lyon's death; I remember

how Baker, the noblest Roman of them all, exchanged the Senator's toga, which had honored him and which he had honored, for the soldier's sword, freely poured out his life, and went up into the presence of the God of battles; I remember how, in Kentucky, the stream runs darker to-day with the blood of McCook; I remember how hundreds of other brave men have fallen and died on scores of battle-fields, while leading their countrymen against the legions of the rebellion; I remember how, yesterday, the tidings flashed along the "million chorded lyre of thought" which spans the continent, that Hooker lies bleeding and suffering; I remember how the whole land has been filled with wailing and wo, not for those alone, but for the thousands and thousands of unrecorded dead. I, sir, have too recent a memory of those things. Although the more advanced age and cooler judgment of some may render them more considerate; although I have every disposition to extenuate the faults and follies of my countrymen, and no disposition whatever to invoke the anger or resentment, or to stir up the bad passions of men; yet, if other gentlemen are willing to give to these men, who have brought upon the nation this great load of mourning and wo, all the rights and privileges of good and loyal citizens, without expressing one word of disapprobation, I am not. Such sentiments and feelings may animate the minds of some, but they do not mine, nor do I believe that they animate the minds of a majority, nor any very considerable portion, of my constituents in Storey County.

The question was taken on the amendment offered by Mr. Toner, and, on a division, the amendment was not agreed to; ayes, 5—noes not counted.

Mr. DeLONG. I do not believe the Convention understood the question. [Laughter.]

The question recurred on the amendment offered by Mr. Dunne, (accepted subsequently by Mr. Hovey,) to strike out, in the latter part of the section, the words "or disloyal," and to insert between the words "idiot" and "insane" the word "or," so as to read, "and no idiot or insane person shall be entitled to the privilege of an elector."

The question was taken by a division, and the vote was, ayes, 14—noes, 14.

Mr. DeLONG. How does the Chair vote?

Mr. WARWICK. I think there is an inaccuracy in the Secretary's count.

The CHAIRMAN. In Committee of the Whole there must be a majority, or the proposition is lost; but the Chair will vote in favor of the amendment.

Mr. MASON. I give notice that I will move a reconsideration to-morrow.

Mr. WARWICK. It is not in order in Committee of the Whole.

Mr. DeLONG. As the gentleman from Lander, (Mr. Warwick,) says there has been an inaccuracy in the count, I call for a re-count.

Mr. CHAPIN. I understood the Chairman to vote in the affirmative, which carries the amendment.

Mr. DeLONG. Then I withdraw my demand.

Mr. WARWICK, and several other members, demanded a re-count.

The CHAIRMAN. Perhaps it would be better to have a re-count, that all may be satisfied. If there is no objection, the question will be taken again.

The question was again taken, and, upon a division, the amendment was adopted; ayes, 15—noes, 14.

DUEL[illegible].

Mr. KENNEDY. I have an amendment to offer. I move to insert, after the word "insane," in place of that which has been stricken out, the words: "or any person who refuses to take the oath or affirmation of loyalty, as prescribed in this Constitution."

Mr. DUNNE. I think, as it stands now, it does not read well. The word "person" should come in. It should read, "no idiot or insane person or any person who refuses," etc.

Mr. DeLONG. I would ask the mover of this amendment if he has examined the oath which he refers to. The oath reads:—

"I ——, do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign; and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution or law of any State Convention or Legislature to the contrary notwithstanding; and, further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever."

So far it is all right, but the balance I do not like. It reads in this wise:—

"And I do further solemnly swear (or affirm, that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge, or acceptance, since the adoption of the Constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel, during my continuance in office. And further, that I will well and faithfully perform all the duties of the office of ——, on which I am about to enter; so help me God."

Mr. KENNEDY. Will the gentleman allow me to explain? So far as I am concerned, I do not intend that that shall be in. I do not believe it is necessary to entitle a man to vote that he should swear he has never fought a duel, or that he has never taken part in one.

Mr. WARWICK. That is only after the adoption of the Constitution; it only provides that, in the future, men shall not settle their little differences in that way. It has nothing to do with what they have done heretofore, but it provides that they shall not fight a duel hereafter. As we propose to have a peaceable State, we would like to bar out all that class of gentlemen especially—those who go out of a cloudy morning, with pistols or other weapons, with which to mend their wounded honor. I

think, as this provision is being incorporated in the Constitutions of most of the States in the American Union, it is a good idea for us to have it here. If gentlemen have little difficulties, we propose that they shall settle them in a way which will not endanger life. We are now approaching an age whose civilization should frown down all those barbarous modes of settling quarrels, and, as the thing has been accomplished in almost every State of the American Union, I hope we shall incorporate it in our Constitution.

Mr. KENNEDY. I do not understand that we have adopted this oath yet. My amendment contemplates that we will adopt some test of loyalty in this Constitution—either this oath, or another in place of this. I do not myself think this is the oath which ought to be taken; it is not strong enough to suit me.

Mr. BROSNAN. I am inclined to think that my friend from Lyon will not reach his object by his amendment. I understand his object is to exclude from voting, those persons who have been disloyal to the General Government. Now, if we take this oath, or any oath incorporated in place of this oath, it must act *in futuro*. It applies only to things to be done after the adoption of our Constitution, and I think that will not reach the object which the gentleman has in view, that is, to exclude from the elective franchise those who have been disloyal.

Mr. KENNEDY. I do not see what difficulty there will be in attaining the object by an oath acting *in futuro*. Of course, it may relate to things past, but I see no difficulty in arranging it so as to reach the desired end.

Mr. BANKS. This matter seems to have arisen here by accident, and I think it is very fortunate. I approve of what there is of this oath, and I conceive it is exceedingly desirable to apply this test to those who come up to the polls. I do not think that, by the most elaborate plan that can be devised, the Legislature could provide so efficient a remedy against the practice of dueling as we provide by this test. It does not affect the past, so far as loyalty is concerned, but it requires people to bear true faith and allegiance to the Federal Government, and it requires the voter to make oath that he has not been engaged in fighting a duel since the adoption of this Constitution. It provides that if he cannot swear this, he shall suffer the penalty of being excluded from voting. I like it exceedingly—it is not *ex post facto* in any sense; it does not touch the past at all, but it dates from the adoption of the Constitution. I hope it will be adopted, whether or not the design was, as it would have been with me if I had proposed the amendment, that we should adopt it as a safeguard against the evil of dueling; because experience has shown that it cannot be fully provided against by any other system.

Mr. BROSNAN. I am afraid that I have not been so fortunate as to be clearly understood in regard to this oath. I expressed no objection to the oath itself, but I apprehend that the mover only intended to supply something in place of the word disloyal, which had been stricken out. That is to say, that he intended to provide that persons who have been concerned in the rebellion should be precluded from the exercise of the rights of franchise until they have taken the oath of fealty. I did not find any fault with the oath, but I stated that I thought it would not accomplish the gentleman's object.

Mr. DELONG. To relieve myself from the possible imputation of being a "chivalry" man, or a duelist, I desire to say that I do not go with that crowd. But I know that the same kind of provision which is here contemplated has been contained in the laws of California ever since it was a State—making it a felony to fight, or to be concerned in a duel, and that very fact has led to people's utterly disregarding the law on the subject, and California has in consequence been a perfect dueling ground, for the last fifteen years. Many of the brightest and best of her citizens have gone to their graves with the Constitution and the Statutes of that State with that clause in them, hanging over their heads. Now, when you make a prohibition as strong as it is made here, I think it never will result in prohibiting or preventing dueling. You say here, that a man, in order to prove his loyalty, has got to swear that he never fought a duel. Well, suppose he has fought a duel, cannot he do that and yet remain loyal? All those provisions I consider entirely out of place. I think that it would result in this—that those who go to the polls and take the oath, will utterly disregard that part of it. I do not consider that any such restriction in regard to dueling is advisable. Those who want to fight will disregard such provisions, and those who do not want to fight will conceive themselves at liberty to insult a man outrageously, and then when they are challenged, will shelter themselves behind such a provision, and say: "Oh, I cannot fight a duel, because if I do I am disfranchised. I would like to exceedingly, but for the law." I think we shall have much less of persons insulting each other—a thing which is constantly going on in halls of legislation and through the public press—if we refrain from making any such provision. As long as a man feels that another man has a right to hold him responsible, he will not be so ready to deal in insulting language, or so flippant in talking or writing about the character of his neighbor, as he would otherwise be. Now, the provision which is submitted here is, that before a man is allowed to vote, he shall be required to take that oath. Suppose a man's friend wanted to fight a duel; suppose he had been outraged in every conceivable way—

The CHAIRMAN (interrupting). The gentleman is, I think, a little out of order; the question is on the amendment requiring the voter to take the oath of loyalty," as provided

in this Constitution," and the subject to which the gentleman's remarks are addressed is that oath prescribed for civil and military officers. That has no relation, I take it, to this provision, and, consequently, I think the remarks are not in order.

Mr. DeLONG. But that, I believe, is the only oath in the Constitution.

The CHAIRMAN. The Constitution has only been adopted as a basis, and I think the adoption of the amendment proposed would presuppose some future action in adopting an oath of loyalty. I do not conceive, therefore, that, until this matter is disposed of at least, it is at all in order to discuss the subject of loyalty.

Mr. DeLONG. Well, then, I will say, let them frame the oath which they desire to prescribe, and insert it here, and if it suits me, I will go for it.

Mr. KENNEDY. Suppose we do not adopt any oath.

Mr. DeLONG. Then the amendment would be entirely senseless.

Mr. KENNEDY. Suppose we see fit to adopt an oath of loyalty hereafter.

Mr. DeLONG. Then it may not suit me. If the Chair please, I am opposed to the amendment until the oath is prepared which it is proposed to adopt. If it is not yet drawn, how can we tell whether or not it would be wisdom to require it to be taken? The gentleman should have been prepared to submit the oath at the same time with his amendment, and should have said, that no man shall be allowed to vote who has been convicted of felony, etc., or who is idiotic, or insane, or, if he refuses to take the following oath—then and there reciting the oath.

Mr. HAWLEY. I move to lay the section on the table, for the present, in order to give the gentleman time to draw up a form of oath.

Mr. CHAPIN. I hope that course will not be taken, but that we shall finish the subject now. I think if the mover will modify his amendment a little, we can act upon it now.

Mr. HAWLEY. I did not make the motion out of any opposition to the amendment. I have no objection to the requirement proposed by the amendment, and I will withdraw the motion.

Mr. BANKS. I wish to offer an amendment. I propose to insert the oath prescribed in Section 2, of Article XVI, of the old Constitution. I regard it as an admirable oath to accomplish the purpose which I desire, whatever may have been the object of the original mover of the amendment. It will then designate this oath as the oath to be taken:—

"I, ——, do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any State, Convention, or Legislature, to the contrary notwithstanding; and, further, that I do this with a full determination, purpose, and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear (or affirm,) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge, or acceptance, since the adoption of the Constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel; so help me God."

The question was stated upon the adoption of the amendment to the amendment.

Mr. BANKS. The oath to which attention has been directed, seems to cover all the ground desirable, under the circumstances. A man comes up to the polls, his loyalty is questioned, and then he is sworn to support the Constitution of the United States, and the Constitution of the State of Nevada; that is one proposition. He is sworn first to abide by those constitutions hereafter; and then he is also sworn as to participating in a duel.

Mr. DeLONG. I wish to ask the gentleman a question. This says, that no man shall be allowed to vote who has fought a duel since the adoption of this Constitution. I wish to ask if he intends it to apply to those who may come to this State hereafter, having previously fought a duel elsewhere, without any knowledge that there was such a provision in our Constitution?

Mr. BANKS. I presume it would apply to them, if the courts should rule as strictly as the gentleman intimates, but we can guard against that by inserting an amendment, when we come to it, adding after "fought a duel," the words "in this State," and then there will be no ambiguity. I presume that the courts would clear up the matter by their decisions, but to avoid any such necessity I will propose to have those words inserted. The reasons why I advocate the oath proposed are not the reasons which the gentleman has advanced, but I believe they are sufficient.

Mr. KENNEDY. With the permission of the Convention, I will modify my amendment by inserting that oath which we have already taken.

The CHAIRMAN. I think it will hardly be in order, unless the gentleman from Humboldt withdraws his amendment.

Mr. BANKS. I consider my amendment much better.

Mr. DeLONG. Take either position—whether he inserts the words "in this State" or not—the gentleman from Humboldt is at sea. What good will the provision do, when we have put that in? If two men want to fight a duel they can cross the line and fight it in the State of California, in order to avoid the civil authorities here and the penalties you impose. If you do not put that in, then a party who may have fought a duel in another State, without any knowledge of the provisions of the Nevada Constitution, upon coming to our State would be deprived not only of the right

of voting, but of the right to sit on a jury. I think that oath is all fudge.

The CHAIRMAN. I do not think the oath refers to fighting a duel "in this State."

Mr. DeLONG. No, sir; but the gentleman from Humboldt said he would amend the oath in that respect, so as to avoid convicting a man who had fought a duel in another State, where there may have been no such legal penalties.

Mr. BANKS. I had not examined the language of the oath particularly. I was not proposing or trying to amend it at that time, but I was simply offering it by way of throwing out a hint of what amendment might be made, in order to obviate the difficulty. We might use different language from that. We might say, perhaps, that, "while a citizen of this State" he shall not have fought a duel. But it seems to me that there is no necessity for us to consider the exact phraseology at this time.

The question was taken on the amendment proposed by Mr. Banks, and it was not agreed to.

Mr. KENNEDY. I now move to insert the oath which we have all taken, omitting only the words "that I will well and truly discharge the duties of the office on which I am about to enter." I will ask that the concluding portion of the section be read as it will then stand.

The SECRETARY read as follows:—

And no idiot or insane person, or any person who refuses to take the following oath or affirmation, to wit:—"I ——, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or Constitution within the United States, hostile or inimical thereto. And I do further swear, that to the best of my knowledge and ability I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion—SO HELP ME GOD."—shall be entitled to the privilege of an elector.

Mr. DeLONG. A person cannot take that oath who comes under this Amnesty Proclamation which we have already adopted; so that after all they would be excluded, notwithstanding the President's Amnesty Proclamation. He cannot swear that he has not borne arms against the General Government, although he might take an oath that after having done so he had been pardoned by the Amnesty Proclamation. Such a man comes here and finds that, notwithstanding his full pardon, he is not allowed to vote unless he swears that he never was in the Confederate service. That conflicts with the provision which we just now refused to strike out.

Mr. CHAPIN. I am in favor of that oath in its proper place, but I do not think this is the place for it.

Mr. DeLONG. But the man who comes under the Amnesty Proclamation cannot take it, anyway.

Mr. COLLINS. This seems to me not only unnecessary, but manifestly wrong. It occurs to me that it will necessarily deprive many men of the right of voting who are entitled to it by the previous part of the section. And then, under peculiar circumstances, a combination or conspiracy may be made at the polls, by which every man may be challenged and required to take this oath, and the consequence would be that you would not get one hundred votes polled in the course of the day. There are some polls, in the populous counties, where there are from twelve hundred to two thousand votes to be cast, and under a provision of this kind, by which every man could be compelled to take this oath, you would not get one quarter of them in. It seems to me that the provision is unjust and unnecessary, and I hope it will not prevail.

Mr. CRAWFORD. I desire to offer a substitute. I move to amend, by substituting for the oath here proposed, the first part of the oath contained in the old Constitution, and which reads as follows:—

"I, ——, do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any State, Convention, or Legislature, to the contrary, notwithstanding; and, further, that I do this with a full determination, pledge and purpose, without any mental reservation or evasion whatsoever."

Mr. KENNEDY. I will accept that amendment. We will change it, however, before it reaches its final passage, I think.

The question was taken on the adoption of Mr. Kennedy's amendment, as modified by Mr. Crawford, and it was agreed to.

Mr. WARWICK. I think it is necessary to add something to that. I think we should add the words "so help me God," in order to make it perfect. I move to add those words.

The question was taken, and the amendment was agreed to.

The question was taken on the adoption of the section as amended, and, upon a division, it was adopted—ayes, 19; noes, 5.

RESIDENCE OF VOTERS.

Section 3 was read, as follows:

SEC. 3. For the purpose of voting, no person shall be deemed to have lost a residence by reason of his absence while employed in the service of the United States, or of this State, nor gained a residence while a student in any seminary of learning.

Mr. FRIZELL. I move to amend, by striking out the words "nor gained a residence while a student in any seminary of learning." I think if there is anything which should qualify a man to cast an intelligent vote, that is the very thing; a man who is in attendance upon a col-

lege or a seminary of learning ought certainly to be qualified to cast an intelligent vote.

The CHAIRMAN. If the Committee will allow the Chair, in order to save time, I will suggest that the effect would be that a man would lose residence by being absent at a seminary of learning in another State. As it is now, after an absence of twelve months, he would be entitled to vote, notwithstanding such absence.

Mr. HAWLEY. The words "or lost" do not occur in this part of the section. It reads, "nor gained a residence."

Mr. CROSMAN. I apprehend that the point to be avoided is this: I understand if there should be a seminary of learning here, containing, perhaps, some three or four hundred students, unless there were a provision of this kind, those students might control all the local offices. Such things will be likely to occur if we have seminaries of learning, as we hope we shall have, under this Constitution. I hope, therefore, that the section will remain. If by a six months' residence in a seminary of learning, students could gain a right to vote, they might combine in a way which would be prejudicial to the interests of the permanent population, they themselves being only transient residents.

Mr. FRIZELL. The argument is, that in some particular locality, three, four, or five hundred men, who should be students in a seminary of learning, might control the vote of that particular locality at the polls. Now, if that argument is good, what do you say in regard to the army? That constitutes a perfect combination, and not only that, but they have a military organization, and nevertheless they are allowed to vote. I think, if there is any class of men in the world who should be allowed to vote away from the places of their actual residence, it is that class of men who may be found in an institution of learning.

Mr. LOCKWOOD. The gentleman refers to the soldiers' vote; but soldiers are only allowed to vote for offices in their own States or localities, and not for offices in the State or locality where, at the time of voting, they happen to be stationed or on service.

Mr. FRIZELL. I am aware of that, sir.

Mr. CRAWFORD. In order to make it more distinct, I move to insert after the word "have," in the first part of the section, the words "gained or," so as to read, "for the purpose of voting, no person shall be deemed to have gained or lost a residence," etc.

Mr. DeLONG. I would suggest to the gentleman whether it would not be well to substitute the language which is to be found in Section 4, Article II, of the California Constitution, which, I think, covers the idea of both gentlemen. It reads as follows:—

"For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of this State or of the United States or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum at public expense; nor while confined in any public prison."

I see nothing in that which would be objectionable, except it may be, perhaps, the words "while engaged in the navigation of the waters of this State."

Mr. FRIZELL. I think the less said about that the better.

Mr. CRAWFORD. I will accept that amendment.

Mr. DeLONG. I will offer the section, then, as an amendment, with the navigable waters of this State stricken out, so that it will read:

"For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum at public expense; nor while confined in any public prison."

Mr. LOCKWOOD. I move to strike out all relating to the high seas.

Mr. DeLONG. Oh, no! there may be men in the naval service of the United States who go from this State, as well as from any other.

Mr. BANKS. Certainly, men may be in the naval service of the United States from Nevada, and it strikes me that the language is quite proper, and even indispensable.

The amendment offered by Mr. Lockwood was not seconded.

The amendment offered by Mr. Frizell was withdrawn.

The question was taken on Mr. DeLong's amendment, and it was agreed to.

The section, as amended, was adopted.

Section 4 was read, as follows:—

"No soldier in the army of the United States shall be deemed a resident of this State in consequence of being stationed within this State."

Mr. LOCKWOOD. It seems to me that that is entirely covered by the section which we have just adopted.

Mr. HAWLEY. That is so, Mr. Chairman; if I remember the phraseology of the section which we have just adopted, it provides that no person shall be deemed to have gained or lost a residence while in the service of the United States, and I therefore move that this section be stricken out, the ground being already completely covered.

The question was taken, and the motion was agreed to.

THE SOLDIERS' VOTE.

Section 5 was read, as follows:—

SEC. 5. The right of suffrage shall be enjoyed by all persons otherwise entitled to the same who may be absent from this State in the military or naval service of the United States; *provided*, that the payment of a poll-tax, or a registration of such a voter, shall not be required as a condition to the right of voting. Provision shall be made by law, regulating the manner of voting, holding elections, and making returns of such elections.

Mr. BROSNAN. I do not like the connection

of the last part of the section here. It says: "Provision shall be made by law, regulating the manner of voting, holding elections, and making returns of such elections." There is not, in any other part of the article, any provision made, that I can find, for the regulation of other elections, and being in this connection, it may be understood as applying only to elections held by this class of voters. I have prepared a section here, a new section, in relation to general elections, which might come in to explain this Section 5. It embodies the same matter, and I think makes it more harmonious. The section I propose, reads as follows:—

Sec. 5. All citizens of this State in the military or naval service of the United States, if otherwise entitled to the rights of suffrage, may vote at their respective posts or places of rendezvous, for the election of all candidates above the grade of county officers, at such time and in such manner as may be provided by law; and the Legislature shall enact laws to give effect to this provision; *provided*, that the payment of a poll-tax, or registration, shall not be required as a condition to the right of voting.

I will offer that as a substitute for this section, and will state that I intend to add another section, in these words:—

Sec. —. Laws may be passed excluding from voting all persons who have been or may be convicted of bribery, larceny, or any other infamous crime; and all persons who have been or may be interested in any wager or bet depending upon the result of any election.

Mr. EARL. I move to strike out from this proposed substitute for Section 5, all that portion which refers to a poll-tax and to registration, as a qualification for voting. It savors too much, I imagine, of property qualification.

Mr WARWICK. I think there is nothing of that kind in it.

Mr. EARL. I would inquire if the amendment does not anticipate a registry law?

Mr. BROSNAN. It is in anticipation of a registry law, of course. I thought I would provide against any such incumbrance upon the right of the soldier who is shouldering his musket in defense of his country. That is what my amendment does.

Mr. EARL. I have no objection, then, to the amendment.

Mr. BANKS. I do not know that I have a full understanding of the purport of the amendment, but if I am wrong, I trust the gentleman will correct me. I think the difference between Section 5, as it stands, and the gentleman's amendment, is this: that the section allows the soldier to vote for all officers, and the amendment, as the gentleman proposes it, provides that they shall only have the right to vote for all officers above the grade of county officers. Is that the case?

Mr. BROSNAN. Yes, sir.

Mr. BANKS. Now, Mr. Chairman, we all understand very well, that in many counties in any State, the election of county officers, particularly in large cities, is regarded as perhaps the most important matter to be decided at the election. For instance, in the State of California, the election of county officers in San Francisco is not considered second in importance to the election of any other officers in that State. It is a question upon which the people feel deeply; it is one with which their minds are all engrossed at the time the election comes on. It is a question upon which the soldiers of that State, perhaps, take a deeper interest than they do in the election of Governor. So in this State, if it becomes a State, the fact may be the same. I do hope that a privilege so important as voting for officers of the county governments will not be denied to the soldiers. I see no necessity for such discrimination. If the soldier is capable of judging of the competency of candidates for State officers—many of whom would be men whom he would never see—he certainly would be competent to judge in relation to county officers in his own county, where he is more likely to know the men, their antecedents and qualifications. If any good reason can be shown against the soldiers' right to vote for the minor officers, I would like to hear it, and hope it will be shown.

Mr. BROSNAN. I will merely say that I offered the amendment in this way, not from any desire to exclude the soldiers from voting for these minor offices, but because it is a cumbersome piece of business to obtain the soldiers' vote for every county, stationed, or serving, as they may be, at remote and scattered points. It was merely to save the expense and trouble of getting the returns.

The CHAIRMAN. The Enabling Act contains, I think, certain provisions which this section does not meet. The word "rendezvous" is used where the soldier is in the Territory, and "place of service" is employed when he is absent from the Territory.

Mr. BROSNAN. I will modify it, then, so as to read according to the Enabling Act — that they may vote at their respective rendezvous, if within the State; and if without the State, at their respective places of service—so that it will read:—

"All citizens of this State, in the military or naval service of the United States, if otherwise entitled to the right of suffrage, may vote at their respective posts and rendezvous, if within the State, and if without the State, at their places of service, for the election," etc.

Mr. EARL. I will offer an amendment, to strike out the words, "above the grade of county officers," so as to provide that they shall vote for all officers.

Mr. NOURSE. Then I do not see how we gain anything by it, over Section 5, as it now stands. If there is anything to be gained, I should be glad to have it, but if not, my feeling is in favor of retaining the old Constitution. I do not see but what the section in the old Constitution covers the ground as well as this.

Mr. BROSNAN. My object in moving that section, was mainly to avoid the trouble and expense of collecting these scattered returns of the elections of county officers. It may take

two or three months to get the returns. But inasmuch as that does not appear to meet with the favor of the Convention, I think the old section covers the case as well, and I withdraw the amendment.

The CHAIRMAN. No objection being made, the amendment is withdrawn.

Mr. BROSNAN. I propose now to add to the section the following words: "wherein other provisions are not contained in this Constitution."

[Mr. FITCH in the Chair.]

Mr. JOHNSON. I think this is a very material and necessary provision, and I will say, it was offered at my instance. The concluding sentence will then read:—

Provision shall be made by law, regulating the manner of voting, holding elections, and making returns of such elections, wherein other provisions are not contained in this Constitution.

Now, this Constitution has elsewhere provided no method for holding elections, and making returns of such elections, and, without the language contained in that amendment, it occurs to me, that no election could be held under the provisions of this Constitution, until after the Legislature shall have convened, and enacted laws in pursuance of this Section 5. I conceive that it is absolutely necessary, therefore, that the amendment, or words of like import, be inserted, so as to give full force and vitality to the provisions contained in other portions of the instrument. I hope that the amendment will be adopted.

Mr. NOURSE. It does not strike me that it is necessary. I take it that the principle is established that any constitutional provision overrides a statutory provision, and where laws are passed by the Legislature, they must relate only to matters not provided for in the Constitution. Where there is a constitutional provision for an election, therefore, no provision made by law can do away with that constitutional enactment.

Mr. JOHNSON. That may be all true. That may be the result of judicial decisions and interpretations of the Constitution, but, by the adoption of the language proposed in this amendment, we leave the question beyond all doubt and uncertainty. We thus give a judicial exposition ourselves, without leaving it for the courts to pass upon hereafter.

The question was taken upon the adoption of the amendment, and it was adopted.

No further amendments being proposed, the section was adopted.

Mr. BANKS. I move that the Committee rise, report progress, and ask leave to sit again at a quarter past seven o'clock, this evening.

Mr. DeLONG. I object to that motion; the Committee cannot ask leave to sit at a certain time. They can only ask leave to sit again, and the Convention directs the time of that sitting.

Mr. BANKS. I have no objection to modifying my motion, as it involves a question of parliamentary law. I will move that the Committee rise, report progress, and ask leave to sit again, and then the Convention can determine the parliamentary question.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the Chair,

The CHAIRMAN reported that the Committee had had under consideration Article II, entitled "Right of Suffrage," had made some progress therein, and had instructed him to ask leave to sit again.

The report was received, and leave granted accordingly.

Mr. DeLONG. I move that the Convention do now adjourn.

Mr. FITCH. I hope the gentleman will withdraw that. I have a very necessary and important motion, and I am sure the gentleman will withdraw his motion, if he understands the object of mine.

Mr. DeLONG. I do not withdraw it, for any such purpose.

Mr. BANKS. I rise to make a motion, which is in accordance with parliamentary law; I move that when this Convention adjourns, it adjourn to meet this evening at seven o'clock. I believe that that motion has to be put first.

Mr. DeLONG. I rise to a point of order upon that motion.

Mr. FITCH. I rise to a point of order, that no point of order is in order when there is a motion to adjourn. [Laughter.]

The PRESIDENT. The Chair will hear the gentleman's point of order.

Mr. DeLONG stated that his point of order was, that the motion of Mr. Banks was an amendment to a standing rule, and that the question must first be taken on the motion to adjourn.

After some discussion, the point of order having been overruled,

On motion of Mr. BANKS, at five o'clock, the Convention adjourned until seven o'clock in the evening.

—

EVENING SESSION.

The Convention met at seven o'clock, P. M., and was called to order by the President.

MEMBER QUALIFIED.

J. G. McCLINTON, Delegate from Esmeralda County, took his seat as a member of the Convention, having first taken the oath of office before Judge Wright, and subscribed the same.

RIGHT OF SUFFRAGE.

Mr. WARWICK. I move that the Convention resolve itself into Committee of the Whole, for the further consideration of Article II of the Constitution, entitled "Right of Suffrage."

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. Warwick in the chair,) and resumed consideration of Article II, entitled Right of Suffrage.

The CHAIRMAN. Section 5 having been disposed of at the previous sitting of the Committee, the Secretary will read the next section.

Section 6 was read, as follows:—

SEC. 6. During the day on which any general election shall be held in this State, no qualified elector shall be arrested by virtue of any civil process.

No amendment being offered, the section was adopted.

Section 7 was read, as follows:—

SEC. 7. All elections by the people shall be by ballot, and all elections by the Legislature, or by either branch thereof, shall be viva voce.

No amendment being offered, the section was adopted.

REGISTRY LAW.

Section 8 was read, as follows:—

SEC. 8. Provision shall be made by law for the registration of the names of the electors within the counties of which they may be residents, and for the ascertainment, by proper proofs, of the persons who shall be entitled to the right of suffrage as hereby established.

Mr. BROSNAN. I am not quite satisfied, Mr. Chairman, with the provisions in this Constitution, or its instructions to the Legislature, in regard to regulating the mode of holding elections. This section, to my mind, is not sufficiently full on the subject, and the only other section we have touching it is Section 5, which may be considered as merely providing for the voting of the soldiers. I would therefore move, as an amendment to this section, the following:—

SEC. 8. Provision shall be made by law for the registration of the names of the electors within the counties of which they may be residents, and for the ascertainment, by proper proofs, of the persons who shall be entitled to the right of suffrage as hereby established; to preserve the purity of elections; and to regulate the manner of holding and making returns of the same.

Mr. JOHNSON. I will make a suggestion, whether we cannot obviate that difficulty by striking out the word "such," which is next to the last word in Section 5, as printed, and inserting the word "all" in lieu of it, so that that provision would read:—

"Provision shall be made by law regulating the manner of voting, holding elections, and making returns of all elections, except as herein otherwise provided by this Constitution."

Mr. BROSNAN. My object is that there shall be no mistake about the action of the Convention on the subject.

Mr. JOHNSON. I would inquire whether that would not obviate the difficulty and save the necessity of adding a considerable number of words at the end of this section.

Mr. BROSNAN. I am afraid it would not meet the difficulty altogether. I would state that this clause, "to preserve the purity of elections," would necessarily imply the power to impose penalties on persons guilty of infractions of the law, and I deem it proper to interpolate that language here, with that view. Although the Legislature would undoubtedly have a right to impose penalties for infractions of the law, still I prefer to see it written plainly in the Constitution, so as to have no question about that right.

The question was taken on Mr. Brosnan's amendment, and it was agreed to.

Mr. HAWLEY. I move to add, after the word "established," in Section 8, the words, "and the Legislature shall prescribe the proof required to be made in such cases." As I have previously remarked, I consider Section 2 as partaking more of the character of a legislative enactment than properly belongs to a constitution; but, in this case, lest there should be some misapprehension—lest there should be no enactment to which reference could be made in the case of disputed and contested elections, in order to prevent the trouble which might arise, I propose to incorporate that language, that the duty of the Legislature shall be so defined that they will not neglect to make the required enactments prescribing the proper proofs of the qualifications of an elector. It may be regarded as surplusage, but I submit it to the judgment of the Convention.

Mr. DUNNE. I do not think the amendment is necessary at all, because the greater includes the less. In the last amendment adopted, we give the Legislature the power to make laws to preserve the purity of elections, and I think all that this amendment proposes is embodied in that.

Mr. HAWLEY. I am inclined to think so myself, on reflection, and I will withdraw the amendment.

No further amendment being offered, the section, as amended, was adopted.

POLL-TAX.

Section 9 was read, as follows:—

SEC. 9. The Legislature shall provide by law for the payment of an annual poll-tax of not less than two, nor exceeding four dollars, from each male person resident in the State of the age of twenty-one years or upwards, one half to be applied for State, and one half for county purposes; and the Legislature may make such payment a condition to the right of voting.

Mr. EARL. I move to strike out this section. As I remarked previously to-day, it savors too much of a property qualification. Sir, I have seen the time in California, at an early day, when to compel me to pay that four dollars would have taken away my pork and beans. We may all possibly see such a time again. We have even now a pecuniary crisis upon us, and do not know where it will end. I certainly think that section should be stricken out, for it may preclude many good citizens from the exercise of the elective franchise.

Mr. HAWLEY. Before making the motion which I propose to make to amend the gentleman's amendment, I desire to say that it seems to me he is unnecessarily alarmed. This poll-tax is left discretionary with the Legislature.

The section says they "may" levy it, it does does not say they "shall" do so, and I am very much inclined to think it would be difficult to get together a legislative body in this State which would do so.

Mr. EARL. If the gentleman will allow me, I will ask him this question: Is "shall" discretionary?

Mr. HAWLEY. The word is "may;" it is in the subjunctive mood.

Mr. DELONG. But "shall" and "may" are synonymous terms in law.

Mr. HAWLEY. Very well. I move to amend the gentleman's amendment, by striking out of the section all after the word "purposes;" that is, to strike out "and the Legislature may make such payment a condition to the right of voting."

Mr. EARL. I consider that this section is merely legislating. We have here provided that the Legislature may raise funds, and that those funds shall be devoted to certain purposes; and I think we are interfering too much with the province of the Legislature.

Mr. DELONG. This provision is under the head of Right of Suffrage. Now, if you strike out this concluding sentence there is not a single thing left in the section which relates to the right of suffrage. It merely provides what the Legislature may do; that it may levy a certain tax upon certain persons, and that one-half shall be applied for State and one-half for county purposes. There is nothing in that which affects the right of suffrage at all, and therefore there is nothing which gives it a place under the head of the Right of Suffrage. If that sentence is stricken out, I shall go for striking out the whole section.

Mr. HAWLEY. It is well known that in almost every State all men are liable to pay a poll tax, and certain means are prescribed by legislative enactments for the collection of such tax. I think, by defining the purpose to which such tax is to be applied, and authorising and requiring the Legislature to levy it, we do nothing more than we ought to do.

Mr. DELONG. Then put the provision in another place.

Mr. JOHNSON. I am opposed to both amendments. In the first place, as to the legal proposition, though I may encounter difficulty, perhaps, by calling out the gentleman from Storey, [Mr. DeLong,] to explain his interpretation, yet I must say that where, in the same section, the word "may" is used in one place, and "shall" in another, it is apparent that they are used in contradistinction to each other; that is, "may" is used with a different meaning from that which attaches to the word "shall," and you cannot, by any reasonable construction, determine in such a case that, when you say "may" you mean to say "shall."

Mr. DELONG. I made that remark in reply to the gentleman from Douglas [Mr. Hawley]. I will say this, that in all public acts where a public body is directed to do a thing by the word "may," it is held that it means "shall." But where the language applies to individuals and not to a public body, "may" means "may." We had that question argued the other day, before Judge North.

Mr. JOHNSON. Will the gentleman allow me to interrupt him? Does not he mean that when applied to public bodies, the word "may" means "may," and when applied to private individuals it means "shall?"

Mr. DELONG. No, sir; there was a case argued a few years ago in which a large number of leading members of the bar participated, and the whole argument was upon the construction to be given to the words "may" and "shall" in the statutes, where a municipal corporation was directed. And it was conceded, after a very full argument, that the word "may" meant "shall" in a law or ordinance which directed a body corporate to do a certain thing. But when the right of private parties was involved, it was differently construed by the court.

Mr. JOHNSON. It matters not what construction may have been given; if it is what we mean by that section it will be so held. In this case both words are used in the same section. In the one case it is imperative, and the word "shall" is used, and in the other, the word used differing from that which preceded it, evidently conveys a different meaning. In the first part of the section we say that "the Legislature *shall* provide by law for the payment of an annual poll-tax," etc., and then following that, we say, "and the Legislature *may* make such payment a condition to the right of voting." I understand the proposition of the gentleman from Storey is, that the use of this word "may" renders it imperative upon the Legislature to make the payment of the poll-tax a condition precedent to the right to vote. Am I correct?

Mr. DELONG. I do not make it my argument at all, but the same language was used in the act relative to the consolidation of actions, and that is where the argument sprung up to which I have referred. The act said in one section, that in certain cases the courts "shall" consolidate, and in another place, in other cases it said, the court "may" do it. The counsel on the opposite side were contending for this very interpretation of the act—that though the two words were used in the same statute, as here they are used in the same section, they meant the same thing, and must be so construed. And that opinion was concurred in by the judge with the concurrence of eminent counsel after that argument—that in an act directing a thing to be done by a public body, "may" meant "shall."

Mr. JOHNSON. I do not think that is a fair illustration. There it is confessedly acknowledged that "shall" was used in reference to a portion of the practice act, and, of course, there was no escaping the binding force of that word. In the other case, where "may" was

employed, it was dependent upon that which preceded it, so that it could not avoid the operation of the stronger or more mandatory word which preceded, to wit, the word "shall." Therefore, I say, it is not a fair illustration of the proposition as contained in this section. Now, sir, this section applies to two subjects, and that is an additional argument to that which the gentleman has suggested. If you strike out the latter part of the section, then there is nothing left pertaining to the right of suffrage; therefore there are here two propositions, neither of which is dependent upon the other. One is mandatory, and the other discretionary.

Now, sir, I do not like to invoke the action had by the former Convention, because that is a delicate matter, so far as I am concerned, and so far as many other members of this Convention are concerned; but there are some members of this Convention who participated in the deliberations of the former Convention, and in the discussion of this subject, and every one of them will remember full well the report which emanated from the committee of which I had the honor to be chairman, and the discussion which ensued upon it. They will remember the change which was made, and the reasons which suggested that change, in the language of this section. I am free to say that I did then infinitely prefer that the word "shall" should be used where "may" occurs. I was in favor of adopting words conceded to be of a compulsory nature, and we reported it from the committee in that condition, but it was afterwards changed. My friend on my left, (Mr. Brosnan,) made an eloquent and timely appeal to that Convention, which, at a later stage of the proceedings, had a controlling effect, for, with almost unanimous voice, the Convention consented to substitute the word "may" for the word "shall," thus leaving it, according to the understanding of that Convention, discretionary with the Legislature to impose a poll-tax as a condition precedent to the right of voting, or not, as they in their best judgement saw fit. That is my recollection, and I will ask the gentleman from Storey. (Mr. Brosnan,) if I am not right. Such is, at all events, my recollection of the proceedings in that Convention, and I know that members at that time entertained the opinion that there was a marked distinction between those two words.

So much for the one branch of the proposition; now for the other. In the first place, if we establish here a State Government, I say now, and I may have occasion to repeat it hereafter when we come to consider a more important feature of this instrument, that I want it to be a self-sustaining Government. I want all within our borders to contribute their just proportion towards the support of that Government. Whether they have little or much property, their interest in the well-being and prosperous condition of the State is the same, and the man who has not a great deal of this world's goods should yet be compelled to pay his quota in that small degree which he has. And such is the object and intent of this section. It is not property alone, but the man himself who is also protected, in all his various relations and interests, by the Government; and it is provided in this section that all male citizens of the age of twenty-one years or over, be they white or black, yellow or copper-colored, shall pay an annual poll-tax in addition to any tax that may be assessed upon their property, for the protection which the Government affords to their persons. I want this clause extended so as to reach every class of individuals. You know, Mr. Chairman, and every gentleman on the floor recognizes the fact, that there are many persons who are the owners of property which is never reached by the tax-gatherer, although they are abundantly able to pay; and I propose, as one individual member of this Convention, that there shall be incorporated in our Constitution such provisions as are best calculated to reach that class of persons.

As to the matter of the right of voting, I am willing to accede, as I did on that occasion, in the former Convention, to the opinions of the majority, and not make the obligation imperative upon the Legislature to incorporate into the statutes a provision that the right of voting shall be conditional upon the payment of the poll-tax. I am willing to leave that to the discretion of the Legislature. If the times be hard, and men find it difficult to raise the small amount of a poll-tax, then the members of the Legislature, coming fresh from the people, may not deem it wise to incorporate into the statutes a provision of that kind; but the next ensuing session the case may be different, and they may deem it the part of wisdom to take that action. I propose, therefore, to leave it to the representatives of the people in the Legislature, although, as I said before, I would personally prefer to make it compulsory upon every voter to pay this poll-tax. Now, I do hope that no part of this section will be stricken out—neither the one making it compulsory upon the Legislature to levy a poll-tax, one-half of the proceeds of which are to go to the State, and the other half to the county; nor the other proposition which authorizes the Legislature in their discretion to make such payment a condition to the right of voting. I am in favor of allowing the Legislature to put in operation such a law whenever they may deem it expedient.

Mr. BANKS. To avoid the difficulty suggested in regard to construction, I will offer an amendment.

Mr. CHAIRMAN. The Chair will call the gentleman's attention to the fact that there is already an amendment pending.

Mr. HAWLEY. I am fully satisfied as to the proper construction to be put upon this language which I propose to strike out, and being fully of the opinion, as expressed by the

gentleman from Ormsby, (Mr. Johnson,) that the poll-tax should be collected, and that the penalty, if any, should be left discretionary with the Legislature, I now withdraw my amendment, in order to leave the section as it now stands.

Mr. BANKS. Then I suppose my amendment will be in order. I offer it to obviate the difficulty in regard to the construction. I move to add, after the word "may," the words, "in its discretion."

Every lawyer knows how easy it is to cite authorities, and to make arguments upon the construction of the words "may" and "shall." I have often, though I am not a lawyer myself, participated in such discussions, and I have found that it was just as easy to advocate one side as the other. [Laughter.] And I often had occasion in the Legislature of California to advocate the insertion of these same words, "in its discretion," in order to avoid that very difficulty of construction. I so fully and exactly agree with the gentleman from Ormsby, (Mr. Johnson), as to the necessity of requiring every man to aid in the support of the Government, and especially at this particular time, when we are just entering upon our career as a State, that I will not add anything to his remarks upon that subject.

Mr. EARL. If we are going to say that the Legislature may, in their discretion, do this, why not leave the section out altogether and let them use their discretion? Why should we dictate to them in this matter at all? Has it come to this, that we must have a property qualification? Why, sir, I could find you two hundred men now in our city of Virginia who would be unable to-day to pay that four dollars. I say it savors of property qualification, and I hope to God this Convention will not tolerate the idea. Are we to be disfranchised merely because we are not able to raise four dollars? Is this a republican government, or is it not? Are we to disfranchise not only the young, but the old, because they do not possess wealth? Is that the proposition? I hope the Convention will strike out the section. My friend from Washoe, (Mr. Nourse), has prepared an amendment to another clause of this Constitution, and in the event that this section must go into the Constitution, I hope that amendment will be adopted. But it seems to me that if we reflect a moment we shall see that it is taking away the right of voting from many good citizens, and shall therefore repudiate the idea altogether.

Mr. NOURSE. I cannot feel the force of the remarks of the gentleman from Storey, who has last spoken. It seems to me there are two advantages which the people derive from Government, namely—the protection of persons and the protection of property; and that while property should pay its share for the support of the Government, and for its protection, persons should also pay their share for the protection afforded them by the Government. And I am particularly and peculiarly in favor of retaining this section, especially that portion of it giving this power to the Legislature—and I hope the Legislature will use it—for the especial reason that it will tend greatly to promote the purity of elections. If there should be one or two cases of hardship, such as the gentleman from Storey, (Mr. Earl), suggests—and the number of such cases must be very few, where a man cannot raise one, two, three or four dollars—still the advantage to be gained in the aggregate will more than compensate for those cases of hardship. Why, sir, this poll-tax would not amount to more than one day's work of a laboring man, and I do not believe that in this Territory there are any considerable number of laboring men of ordinary industry, who cannot well afford to give one day's work every year to the support of the Government which protects them. And when this is made a condition to the right of voting, if a whole year is given in which to look around and get the money, I think you will find that there will be scarcely a man who will be deprived of the right of voting on that account. In other States, nothing has been found so efficient to make the registration of voters perfect, and so to preserve the purity of elections, as to require the payment of a poll-tax as a condition of the right of voting.

Mr. JOHNSON. There is one question which has been asked by the gentleman from Storey (Mr. Earl,) which I think can be readily answered. He asks why we do not strike out the section altogether, and leave it to the discretion of the Legislature. My reply is, that if you strike it out entirely, and make no provision of the kind, the Legislature can never put it in.

Mr. EARL [in his seat]. I should hope to God they never could.

Mr. JOHNSON. The gentleman now discloses by that *actio voce* exclamation his position, and the true ground of his objection—not that the Legislature might do so hereafter, but that he hopes they may never be able to do it.

Mr. EARL. That is so.

Mr. JOHNSON. Then the gentleman—I say it with all deference—was rather unfair in his argument. He now discloses the whole ground-work of his opposition. The Legislature can have no discretion in the matter, unless we incorporate a provision in this instrument giving them such discretion.

Mr. BROSNAN. I will not detain the Convention long on this subject, but I cannot, certainly, concur in the doctrines which have been asserted by the gentleman from Ormsby (Mr. Johnson.) If I understand him correctly, he has just said that if this section were omitted from the organic law of the State, the Legislature can never make such a provision afterwards. I say that is not law, neither constitutional nor statutory. I say that all power exists in the Legislature of a State, except so far as the same is limited expressly by the Con-

stitution, and I say that that provision is expressly within the powers of the Legislature—that the subject matter therein is a proper subject of legislation. And inasmuch as it ought not to be in this Constitution, and might well be provided for by an act of the Legislature, I shall vote against the provision, not because I am opposed to the payment of a poll-tax, but because I am opposed to making such payment a condition of the right of voting. For myself, as my friend from Ormsby, (Mr. Johnson,) has stated, I opposed it in the last Convention, with such feeble opposition as I could bring to bear against that side of the question, and such advocacy as I could give to the side I had espoused. I shall not take that course upon this occasion. My views were then given freely and at length; the Convention overruled my objections, and I found no fault on that account. It is true, however, as my friend who has just taken his seat has observed, that they did subsequently modify this section, out of what I considered as a disposition to be courteous toward me, in view of the effort I had made to prevent the incorporation of the language originally proposed. They did alter the last paragraph by changing the word "shall" to "may," making it, as I understood, and as my friend has, I think, correctly observed, discretionary with the Legislature, in the imposing of that tax, to make it a condition of the right of voting.

My objection is, I repeat, that it is a matter subject to and properly within the sphere of legislation, and no man, either learned or ignorant in constitutional or statutory law, will, I think, venture to deny that proposition. No man can successfully maintain that it is not a proper subject of legislative action; and that, therefore, it is here supererogatory, is beyond question. As I said before, all inherent powers of legislation belong to the Legislature of the State, except so far as they may be limited by organic acts or constitutions—by written constitutions, if the State is governed by them, as we are in this country. In other words, in the language of old writers upon government, the Legislature is omnipotent. We have merely limited that omnipotent power, in the United States, by our written constitutions, because we have considered it necessary to put a restriction upon that omnipotence. I shall vote against the section, Mr. Chairman, not because I am opposed to a poll-tax; not because I am opposed to the payment of a poll-tax being made a condition precedent to the right of voting—although I would myself regret to see the day when the boon of the elective franchise should be bought with paltry gold—not because a man has to pay four dollars for the privilege of voting merely, but because it, in some respects, denationalizes a man.

Mr. EARL [in his seat]. That is so.

Mr. BROSNAN [proceeding]. Because it reduces the American citizen to the level of the man who, in other countries, is allowed to vote only because he is possessed of a freehold estate; because it is not putting the estimate upon the man which belongs to him as a man. It is not viewing the man in the light of him who said—

> "Rank is but the guinea's stamp;
> A man 's a man for a' that."

But I oppose it here not upon that ground particularly, so much as because it is out of place in the Constitution of the State.

Mr. JOHNSON. I should not have arisen to address the Committee again upon this subject, if my very worthy and learned friend who has just taken his seat, (Mr. Brosnan,) had not deemed it proper to attack the legal proposition which I had enunciated to the Committee. Now let us see how the matter stands. The first section of this article as it has already in Committee been adopted, provides as follows:—

> SECTION 1. Every white male citizen of the United States (not laboring under the disabilities named in this Constitution,) of the age of twenty-one years and upwards, who shall have resided in the State six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now are or hereafter may be elected by the people, and upon all questions submitted to the electors at such election.

That, we have already adopted. I assume now, as the predicate of my remarks, that the Convention will ratify what the Committee have done in the adoption of that section. Then, sir, when that is done, and when this Section 9 is stricken out, am I to be told that the Legislature still has the power to impose the payment of a tax as the prerequisite of the right of voting? Is that the gentleman's proposition?

Mr. BROSNAN. Yes, sir, it is.

Mr. JOHNSON. Well, sir, I differ entirely with the gentleman, and I now submit to every lawyer within or without this body, and to every member of this Committee, whether such a proposition is not most preposterous? When the Constitution has declared that all persons possessing certain enumerated qualifications shall have the right to vote, the position is advanced that yet it is within the province of the Legislature to declare nevertheless that those persons, if they have not paid a poll-tax, shall not have the right to vote. The proposition reduces itself simply to this: that the Legislature, by their act, may override what is expressed in the Constitution. Now, sir, upon more occasions than the present, have these propositions been advanced. In the Constitution of California—there is one gentleman on this floor who, I know, is a little nervous on the subject of California, and especially California decisions, but this being a political as well as a legal proposition, we may not inaptly refer to that State for illustration of the subject—in the State of California, the Constitution of that State prescribing certain conditions of the right of voting, time and time again has been discussed within the legislative halls of that State the necessity, and, sir, every man on this floor who has

ever lived in that State has recognized that necessity, if it could be done under that Constitution, of enacting laws which would more securely protect the purity of the ballot-box. You, Mr. Chairman, have had occasion to recur to your experience and observation there. And why has it not been done? Not because the public pulse did not beat in unison with that demand; not because the necessity of provisions of this character was not recognized; but it was because the Constitution had laid down certain rules and conditions regulating the right of voting, and it was not within the power of the Legislature to transcend those provisions prescribed in that instrument. These are some of the reasons, sir, why California has passed through many scenes of peril; why California has, in earlier years, been a by-word and a reproach, in respect to the exercise of the elective franchise. Sir, the hands of the legislative department were tied—were securely bound—by the provisions of the Constitution. Now, sir, I I do not propose further to discuss this question; I am content to submit it, as a legal proposition, to the consideration of every reflecting mind in this Convention. And, whilst I have the greatest of regard and appreciation, as the honorable gentleman from Storey full well knows, for the general correctness of his views upon questions of constitutional and statutory construction, yet, sir, I must, as I have stated, differ entirely with him upon this proposition.

But, again, I would not leave this a question of doubt, if it could be regarded as at all doubtful. I propose, in unmistakable language, to vest the power in the Legislatures which are to come after us, in the representatives of the people in the legislative department, of incorporating in our statute books a condition of this character. I cannot foresee any of the hardships to result which gentlemen have anticipated. My friend from Storey, (Mr. Earl,) who is opposed to this system, and my other friend from Storey, (Mr. Brosnan,) have suggested evils to follow such action, but I can see none of those evils. Sir, those who would most prate about the paltry two dollar poll-tax—those in the community who would be most likely to oppose its payment—are generally that class of men who would be likely to spend more in a day for rot-gut whiskey than would suffice to pay the whole of their tax.

Mr. BROSNAN. Will the gentleman allow me to make an inquiry, which is merely for information, and that is, has the Legislature of California enacted a poll-tax law for which there is no provision in the State Constitution.

Mr. JOHNSON. Yes, sir; they have a poll-tax law; but the Constitution gives the Legislature the power to impose taxes, and that necessarily involves the power to levy a poll-tax. The word tax is used in the Constitution without specifying whether it shall be a tax on realty, personalty, or what. The poll-tax is levied upon every male person of a certain age within the borders of the State. But the proposition I advanced was in reference to this latter clause, this matter of a poll-tax being made a pre-requisite to the right of voting. I repeat that when we have provided in this instrument that all persons possessing particular qualifications shall have the right to vote, we place it beyond the power of the first, or any succeeding Legislature, to impose any additional conditions upon that right. And, sir, for the same reason that the good sense of this Committee has been evinced in incorporating here a provision that the Legislature shall establish a system of registration, I trust we shall also incorporate a provision giving the Legislature power, in its discretion, to require the payment of a poll-tax, as a pre-requisite to the right of voting. Why was not this objection made in reference to the registration clause? If the Legislature had the power to act in reference to this matter without express authority conferred in the Constitution, they certainly would have the power to provide for the registration of voters. But, sir, they will not have the power in either case unless we confer it in this Constitution, and the reverse of that proposition is altogether untenable.

I repeat that, if we are to establish a government here, I want to see it a government which will sustain itself. I want every portion of the community to contribute to its support, and especially those who are apt to complain the most about taxes, while they spend their money for needless and vicious purposes, and generally fail to pay this kind of a tax, when they can avoid it. I am willing to leave the power discretionary with the Legislature to enforce the payment of the poll-tax in this way. I want my friend from Storey, (Mr. Brosnan,) and my other friend from Storey, (Mr. Earl,) if they represent their constituents in the Legislature, to be at liberty to exercise such discretion as shall best accord, at the time, with the wants and circumstances of the people whom they represent. I want those who represent me to have the power of exercising this discretion, if the public exigencies shall demand or require it. Whilst I think we should go still further, and make it imperative upon the Legislature to impose the payment of a poll tax as a pre-requisite to the right of voting, I am not willing to fall short of the provision as it stands here, and deny them the power altogether.

Mr. EARL. I do not wish to be unfair in my opposition, nor to be misunderstood. The gentleman from Ormsby maintained that if this clause were stricken out, the Legislature never could reach such a provision, and my answer to that was that I hoped to God they never would reach it, and I still hope so. I think I should not be doing my duty to my constituents if I did not strenuously oppose this provision, although I may, perhaps, occupy more of the time of the Convention than I ought. It is a matter of great importance to the people of my county, though it may not be in this

county, which the gentleman, (Mr. Johnson,) has the honor to represent. There may be in this county none of that class who would be unable to pay their poll-taxes; but, as I said, there are at least two hundred—yes, sir, I might say a thousand—in our county, as good citizens as you or I, or any other man, whom such a provision would disfranchise, and I, for one, never can consent to do it. If I did, I could not go home with a clear conscience.

So far as relates to the Government being self-sustaining, let it be sustained otherwise than by robbing the poor man of the right of franchise. We can devise other and better means of sustaining our Government.

Now, sir, as to spending money foolishly and unnecessarily, I do not know but I do, but the remark on that subject reminds me of that drunken man who was tottering about in a bar-room, proclaiming that every man around him was drunk, for the reason that he was looking at them with drunken eyes. I do not think that I spend much money unnecessarily; I economise at all times, whether money is plentiful with me or otherwise. I have seen the time when I had plenty of money, and I have also seen the time when I have been without the four dollars which would be required to pay this tax, and that time may come again. I do not know from the appearance of the times but it may be near at hand; but if it does come, I hope I shall stand up to it and not shrink from any responsibility.

I say, let the revenue which is to make our Government self-sustaining come from other sources. I have in my mind a proposition which I think will tend to make the judiciary self-sustaining, and I will submit that proposition in due time. At all events, do not let us make a property qualification, and say to every immigrant, to every man who comes into our State, that he shall not vote unless he has money in his pockets. I know of many men laboring in our mines who to-day could not pay four dollars if called upon—not only foreigners, but American citizens, plenty of them. Now, sir, if we are going to disfranchise a man for poverty, and come down to a property qualification, I prefer that the voter shall be required to be the owner of a house, as in England, before he can be allowed to vote for representatives.

Gentlemen say it will not be a hardship, but I hope that this republican free Government will never stoop to anything of that kind. Never would I willingly go home and suffer such a clause to remain in the Constitution. I ask if it would not work a hardship upon immigrants, who, when they arrive here, find employment scarce and money unheard of, having, from some mysterious cause, all disappeared? I know that is the case from my own experience, though there may be other members with whom it is more plentiful. I think there is a statute which requires that every man commencing a lawsuit shall have paid his taxes, and I think the statute requires an exhibition of the poll-tax receipt. I do not know as there is much objection to that, but I do strenuously object to having any property qualification for the right of voting enter into this Constitution.

Mr. FITCH. I would like to ask my colleague a question.

Mr. EARL. Certainly.

Mr. FITCH. If, in spite of the gentleman's opposition, this provision should go in, what does he propose to do about it?

Mr. EARL. Well, sir, I could only regret to see it there. I should be sorry for it, though it is true I would not be likely to emigrate in order to avoid living under such a Constitution. I do not wish to be responsible for such a provision as this. I shall not vote against the Constitution on that account, if it is put in, but I am satisfied that many will vote against it at the election, and I raise my voice against placing any such clause in the Constitution. I think it will work a hardship, by disfranchising the poor man.

Mr. KENNEDY. I do not wish to detain the Committee at all, but I would like to have an opportunity to define my position upon this question, for, strange to say, the gentleman from Ormsby, (Mr. Johnson,) and myself, for once, agree in every particular. In regard to this section, I, like him, would prefer to see this word "may" changed to "shall"; and if any stronger term could be used, I would like to use that stronger term. I, perhaps, have not a right to state my experience in opposition to that of the other members of this Convention, being its youngest member, but in answer to the gentleman from Storey who last spoke, (Mr Earl,) who I know has not had the experience, even in this Territory, that I have had upon this subject, I will say this—that I know who it is, in our section of country at least, who complain of this poll-tax. It is not your poor miner, for they have always come up nobly and contributed to that other poll-tax which has been devoted to the noblest of all uses, the relief of the sick and wounded soldiers in our army. It is not those men who object to paying two or four dollars a year, but it is your men who have plenty of funds, whose treasuries are overflowing. They are the men who, in order to throw some impediment in the way of our Government, have invariably complained of and refused to pay this loyal tax. I tell you, there is not an honest miner in this whole country who will refuse to pay his two dollars. Gentlemen have spoken about this amount of four dollars, ignoring the fact that that is the limit, and that the Legislature may fix the tax anywhere from two to four dollars. Those are the limits. I tell you, it is not your honest laboring man who will refuse to come up and contribute to this fund for the support of the Government, and if gentlemen wish to make this an economical and self-sustaining Government, this is one of the best provisions for doing it which they will find contained in

this whole Constitution. Let every man feel that his right of suffrage is something worth paying for, even if it is the paltry sum of two dollars.

Why, sir, what has been the result of this policy in other States? I came from a State where a law of this kind has been in operation since long before you and I were born—the old State of Pennsylvania. There you always had to pay your poll-tax before you were entitled to vote. Is there any complaint made there? If there were any man so poor that he could not afford to pay the tax, there were always plenty of politicians to pay it for him ten days before the election, so that he should be recorded as a voter. The poor man felt it no inconvenience, and was still able to vote for whom he pleased, and at the same time the Government derived a benefit from it.

Now, sir, this section provides that one-half of the amount of the receipts of this tax shall go to pay the expenses of the State Government, and the other half for the benefit of the county; and, Mr. Chairman, if you pass that measure, your taxes will be so reduced that there can no longer be any dispute among the voters of Nevada Territory as to our capability of sustaining our own Government. And I contend that it is no hardship. The gentleman from Storey, (Mr. Earl,) says he may not be able to pay it, but I think he is able to pay fifty dollars where I am able to pay one, and I am willing that that should go into the record against me; and, if I cannot raise the two or four dollars, whichever it may be, then I am willing to be deprived of my right of suffrage, although I probably think as much of it as any other man upon this floor. If I have not the money I shall go to work by the day, if necessary, or take any other honorable means to obtain it, in order to secure my right of suffrage. And I think it will be so with every young man in this State. I know of no persons who would be unwilling to pay the tax, unless it be those persons who are altogether opposed to our State Government. The opposition to this feature comes from them, and I know it, because I discussed this question last fall in our county, and I know what the feeling is there. I expressed myself freely, as I always do, and I found that the only men who opposed this feature in the Constitution were the men who opposed the State Government entirely, and for no other reason in the world than because they were unwilling to assist the Federal Government.

Mr. NOURSE. I listened with a great deal of pleasure to the remarks of my friend from Storey, (Mr. Earl), although I thought him on the wrong side of the question. On one point, in the heat of his desire to carry his point, I think he has certainly been a little disingenuous, and not quite fair; though, of course, the gentleman did not intend it. His arguments, though very able, do not seem to me to be of a character well calculated to get at the truth in regard to this matter. It seems to me that he did not present this point in its proper light. It is not that we seek to sell this privilege of voting; with all respect to the gentleman, that is not so. The point is this: here this Government protects the persons and property of all that live under it. It protects persons no less than property. Property is taxed without objection to pay for that protection. The tax upon that property can be collected and secured, for the property is there to answer the demand upon it. Then the person is taxed for the protection that Government gives to the person, but that we cannot collect with certainty. We cannot sell the person. How, then, shall we secure the tax? We say that Government having performed its duty to the person, having given the protection of its laws all the time, to the man, and he having neglected or refused to do his duty in return, to perform his part of the contract, he shall not be allowed to take part in our elections, in forming our government or electing officers to carry it on, until he does perform his part of the contract. There is no sale of the right of voting about it, but the man owes so much to the Government; every man owes it, whatever his proportion may be; and we compel him to pay it under the penalty of forfeiting his share in the Government. We call it a poll-tax, and it is only from two to four dollars a year, as I said before—merely one day's work at the outside.

Now the gentleman from Storey makes the broad assertion that there are thousands in Virginia City, or in Storey County, who cannot pay that amount; but I am yet of the opinion that, except in a very few exceptional cases—cases of sickness or something of that sort—there will be found no person, or no considerable number of persons, at least, in this Territory, who cannot in the course of a year, without any trouble, if he be industrious and temperate, lay aside this amount without any difficulty. We say to every person that he can and must do this. There may be some exceptions, but they only serve to prove the rule. We say to every man, it is your duty to do this, and if you do not comply with this obligation to your Government, you shall have no share in the election of the officers of that Government. Now, is not that fair? and does that savor of property qualification?

Mr. MURDOCK. I trust the committee will indulge me in making a few remarks. I am not accustomed to speaking, but I feel that I could not return to my constituents with a good face without expressing the reasons why I am going to vote no on this occasion. In the first place, I can see nothing in this provision short of a property qualification for the voter. We have in the first place said, that every white male citizen shall be allowed to vote. Now shall we turn around and say that if he happens to be so unfortunate as not to have one, two, three, or four dollars, he shall not vote? The principle is the same—I do not care for

the amount a pleayune—it is the principle I contend for. I say it will impose a hardship in the county I come from. Though I happen to be the only one from that county, yet I represent more territory, and more sage-brush than half a dozen of these gentlemen who represent one county. I represent a great extent of our territory, a large amount of sage-brush, and very few, and very poor men. My constituents are digging and delving in the ground, prospecting and trying to develope the mines. They pay their poll-tax, and I am willing the Legislature should impose upon them a poll-tax of two, four or six dollars, if they wish, and they will pay it. They may make it as stringent as they please, and they will take their coats off and earn it. But for God's sake do not say they shall not vote if they cannot raise the money. Now, gentlemen, would you not be ashamed to say to an old man like me, who should step up to the polls to vote, that he was disfranchised because he was minus four dollars? I would not mind it, perhaps, but that is not it; it is the principle.

In my native State of New York, they once had a provision that every voter must be a householder to the tune of two hundred and fifty dollars, but that provision became obnoxious, and they abolished it. What are you doing here but the same thing? Now the gentleman from Ormsby says, that if you leave this out, the Legislature would have no power to make the poll-tax a condition. Well, I hope to God they will have no power. That is what I stand here to prevent. I should go back with shamefacedness to my constituents, if I did not stand up here and oppose a property qualification for the voter.

Mr. KENNEDY. I desire to ask the gentleman a question. How much is Churchill County paying in the way of poll-taxes now? Did it pay fifty dollars last year?

Mr. MURDOCK. I cannot answer that. I was there last year myself, but I was not the collector. I know that some of them paid, and I know that this year they are paying the poll-tax readily, and they are willing to pay it. I know they are generally disposed to pay their taxes, and, if they are not, I object to their being swindled out of their right to vote. Our county is as loyal, I believe, as any county, and I want every man in it to vote. You may make your law as stringent as you please; you may stop men in the roads and pull off their coats, and pull off their boots, to pay the tax, but, for God's sake, do not deprive them of the right of voting. Those are my views. It is the principle, and not the four dollars, that I am after, though I may not myself be able to pay it, and do not know that I will.

Mr. LOCKWOOD. In Ormsby County, at the present time, I am informed that the poll-tax hardly pays for collecting. Now, sir, I take it that no man in this Convention is trying to disfranchise anybody. The only question, to my mind, is, is it necessary to collect a poll-tax? and if it is necessary, we propose to adopt the most efficient means. Now this bugbear, that any man that is a man, and ought to be entitled to the right of suffrage, cannot raise the paltry sum of two dollars, seems to me like nonsense. I undertake to say that the sum of two dollars would not weigh as much as a feather in the mind of any man in the whole Territory of Nevada, and I believe there are few men in the Territory who did not, during the last year, spend more than two dollars for whiskey. Why, sir, I have no doubt that a majority of men in this Territory have paid out, at the very least, from twelve to twenty-five dollars a year in that way. Now, sir, the man who has not the energy, if he is allowed a whole year to do it, to raise two dollars to pay his poll-tax, ought not, in my opinion, to be allowed to vote.

Mr. EARL. Will the gentleman allow me to ask him a question?

Mr. LOCKWOOD. Yes, sir.

Mr. EARL. I want to know if you make it four dollars, or, if you please, you make it a horse, and demand the four dollars or the horse for the poll-tax, which is it that votes—the four dollars, the horse, or the man?

Mr. LOCKWOOD. Really, I do not understand that there is any question about it. I was not talking about horses voting. I was talking about collecting a poll-tax of two dollars, and the most efficient way to do it. One half of this tax, in our county, goes to support the hospital, but we have got no hospital yet, and the fact is, that the tax is not collected. Now, I arrived in California without anything, and I have held my own pretty well for ten years, but I always paid my taxes; somehow, they always found me. [Merriment]. How does it work? Why, you go to ask a man for his tax one day, and he tells you he has got no money, and you must come some other day. They all say that. Well, you visit him three or four times, and charge the county ten dollars for it, while you only collect two or three dollars. I think this provision will secure the payment of the tax, and I think it is just and ample. To hear gentlemen talk here, one would think that the poll-tax was something new, or something preposterous; while in fact it has been in force ever since we have had a government of any kind. I hope the amendment will be rejected, and the section pass, exactly as it is.

Mr. KENNEDY. I wish to make one statement in regard to the speech of the gentleman from Churchill, (Mr. Murdock,) as I am a little acquainted with the finances of his county. I know that that county, in connection with Lyon, ran in debt, the first year of our organization, five thousand dollars, and Churchill County, since that time, has not paid fifty dollars in poll-taxes, and, I believe, never will.

Mr. MURDOCK. I have lived there some time, and I happen to know something about that. They do pay their poll-tax now, in pro-

portion to the number of inhabitants, and the amount they have paid will come to much more than that, according to the records. I think they have paid as much, if not more, than the county which they were so unfortunately attached to, and they will have no more delinquents, in proportion to their population, than that county will.

Mr. KENNEDY. During last year?

Mr. MURDOCK. Yes, during last year. Now, then, I wish to say something to the gentleman who was last up, (Mr. Lockwood,) who spoke about poll-taxes as not being new and unheard-of. Everybody knows that poll-taxes have been collected, and it is not so terrible a thing to collect them as some gentlemen suppose; people grumble a good deal, but they pay. I have done some of that collecting business in California, and I know it is not a hard thing to collect poll-taxes. Another reason why I am opposed to this section would be this: A man being a little short, and unable to raise four dollars, politicians would hover around him, and try to get him to go for What's-his-name, for Sheriff, on condition that they would pay his poll-tax. I know that some men, for the privilege of voting, would be willing to vote for the devil, for high-priest [laughter], and so, for the privilege of voting, they would sell their votes to politicians. I do not want that class of men to have anything to do with it.

Mr. DeLONG. I would like to inquire of the gentleman, if that illustrative remark applies to Churchill County.

Mr. MURDOCK. No, sir; not particularly. I know that the poll-tax is no new thing, but the idea of making it a condition of voting is what I object to. I would as soon a man should say to me, "you shan't vote unless you own a pair of good horses," as to say, "you shan't vote unless you have got four dollars." If you can make it four dollars now, when the times are easy you might put it up to twenty-five or fifty dollars, and so make more money by it. In that way, by making it a condition of voting, we would have a rich State here presently, but I do not want a rich State on any such terms. It is the principle that I go for.

Mr. DeLONG. I wish to ask if there are going to be many candidates for office in case this Constitution is adopted, because if gentlemen are themselves going to be candidates, they had better vote against it, or all the bummers will be after them to pay their poll-taxes.

The CHAIRMAN. The Chair would suggest that, in his opinion, there is no gentleman in the Convention better qualified to answer that question than the gentleman from Storey himself. [Laughter.]

Mr. DeLONG. I accept the explanation. But in all seriousness, I would say to those who intend to be candidates, that they had better vote against this whole section. I hope that gentlemen will vote for this amendment, however, so that if the section is not stricken out, it may at least be improved.

The question was taken on the amendment offered by Mr. Banks, to insert after the word "may," the words, "in their discretion," and it was agreed to.

Mr. HOVEY. I move to amend, by striking out the words "of the age of twenty-one years or upwards," and inserting instead the words "between the ages of twenty-one and sixty years," so that the section would read:—

SEC. 8. The Legislature shall provide by law for the payment of an annual poll-tax of not less than two nor exceeding four dollars from each male person resident in the State, between the ages of twenty-one and sixty years, one-half to be applied for State and one-half for county purposes; and the Legislature may make such payment a condition to the right of voting.

Mr. EARL. I shall vote for this amendment, because I want to make it as little obnoxious as possible; but I hope the section will not be adopted.

The question was taken, and the amendment was agreed to.

Mr. DeLONG. I move to amend the section by inserting after the word "upwards," or rather after the words "sixty years," as now amended, the words "Indians excepted."

The question was taken, and the amendment was agreed to.

The question was then taken on the motion of Mr. Earl, to strike out the entire section, and it was not agreed to.

Mr. BROSNAN. I propose to amend the section by striking out the words, "one half to be applied for State, and one half for county purposes," and inserting in lieu thereof, the words, "to be devoted to the support of common schools."

Mr. NOURSE. Then we lose every dollar for county revenue. If this poll-tax is taken from general purposes, and applied to schools, we certainly shall be short in our county finances. I think we should be just before we are generous, and provide the means for the payment of our county expenses, which must be met before we go to giving away money to the schools.

Mr. HAWLEY. As superintendent of public schools in the county I live in, I have had occasion to examine very closely the general condition of the school fund, and the approximate amount, at least, likely to be realized from the taxes which will be devoted to the purposes of education during the next year. So far as my own county is concerned, I am satisfied that ample provision is made by the enactments already on the statute book, to meet all the necessary and ordinary expenses, and to leave, probably, a surplus over and above those expenses. And in conversations I have had with the Superintendent of Public Instruction for the Territory, I have been led to believe that the common school system will derive from the present system of taxation—which will probably be continued, if we become a State, until the Legislature shall see fit to remodel it—a sufficient amount of revenue to meet all necessary and ordinary expenses in all the other

section in the Territory or State. I, sir, would not probably be a member of this Convention if it had not been for the earnest desire in my county, that some man from that county should be sent here, who would take a peculiar interest in the subject of education. I came here for the purpose, more particularly, of paying special attention to that subject, more than to any other that may come before us. I will state, that in my opinion, the position taken by the gentleman from Washoe, (Mr. Nourse), is correct, that the new State will need all the revenue derivable from all sources in the way of taxation, to enable it to carry on the functions of government without embarrassment; and therefore I hope that the amendment of the gentleman from Storey will not prevail, but that the funds to be derived from the poll-tax will be applied in the manner originally proposed by the section under consideration, as adopted by the former Convention, whose labors we have taken as the basis of our action.

Mr. EARL. I shall vote for the amendment, and I hope it will pass. It is true, the gentleman from Douglas, (Mr. Hawley,) seems to think they will obtain all that is necessary to maintain the schools under the present system, and the gentleman from Washoe, (Mr. Nourse,) is of the same opinion. I think it is very likely that that is true in our agricultural counties, but we have a very heavy population in our county, and a great many children to take care of, and I submit to this Convention whether we should not prepare ourselves for the education of those children. Are we to let them grow up without education? I have seen and felt the want of education myself, and I hope we shall have a large and liberal fund for educational purposes.

Mr. CHAPIN. I beg leave to say only a few words on this subject. I should regret very much to have the amendment offered by my friend and colleague adopted. Not but what I feel as deep an interest as any man in the welfare of common schools. But if gentlemen peruse this document—the old Constitution—through, they will see that the most ample provisions have been made for common schools. In regard to Storey County, I will say that that county, at this time, needs money more for hospital and other purposes than she does for common schools. And it is the case in this county, and every other county. They need it for county purposes, and I do hope my colleague will withdraw his amendment. The State will need her share. The tax will raise a handsome fund. If we have 14,000 voters, as we probably shall have, a tax of two dollars apiece will raise $28,000; or, if the Legislature fixes it at four dollars, it will amount to $56,000. That will be a very material aid in the support of our new State Government, and for the payment of the necessary expenses of the counties. I do hope that the section will remain as it is.

Mr. BROSNAN. My friend and colleague, (Mr. Chapin,) refers to the ample provision which has been already made, in that Constitution which has not been adopted by the people of this Territory, for our common schools. I would remind the gentleman of the fact, and that is one of the reasons why I offered the amendment, that by the Enabling Act a large portion of the fund upon which we then calculated for public schools, is diverted from that channel—that is to say, the percentage derived from the sales of public lands. By the terms of the Enabling Act we cannot devote that percentage to the common schools, and therefore we are divested of that item so far as relates to educational purposes, being constrained by the Enabling Act to devote it to other purposes. That is according to my construction of the Act, and that is one of the reasons why I have moved this amendment.

I am sorry to say, Mr. Chairman, that I cannot entirely agree with the gentleman from Douglas who has just spoken, (Mr. Hawley,) in regard to the prosperous condition of our common schools. If I am correctly informed by the State Superintendent, there is great need of funds for building school houses. I am informed that even in Douglas County a man might thrust his hands between the planks or boards which cover the school house there, and, if that be the case, I can think of no more sacred use to which this fund derived from the poll-tax can be put, than to the building and repairing of school houses for the improvement of the rising generation.

Mr. CROSMAN. Like other gentlemen who have spoken on this subject, I am willing to do what we can for the common schools, to nourish them and aid them; but I hope all the friends of this section will vote against this amendment, because it is not a friendly move towards the section. This money will be more needed for the purposes of the State and county governments than for the schools.

Mr. HAWLEY. I rise for the purpose of explaining a statement which appears to have been made by the Superintendent of Public Instruction of this Territory, in relation to a school house in Douglas County. It is very probable that when he was there he found the school houses in a very dilapidated condition. But since he has been there, in the extreme southern district of the county, they have built a frame school house, at a cost of five or six hundred dollars, and it is now completed and will be hard-finished. In the Genoa precinct, a brick school-house, to cost about $2000, is building. It will be ready for occupancy in January, and only four hundred dollars remain unpaid of the entire cost. Twelve hundred dollars were raised by private subscription. In the extreme northern district, they have raised two hundred dollars, and preparation has been made to expend it for repairs. The school house will be thoroughly repaired, ceiled, painted, and furnished anew, and I think I may

say, without boasting of our affairs at all, that we shall have as good school accommodations, and as accomplished teachers, also, in the three districts of our county, as can be found, at any rate in any of the new counties, in this Territory. We cannot expect to compare, of course, with the wealthy county which the gentleman from Storey represents, but I think our schools are in a very creditable condition. Moreover, we have received from the public school fund three or four hundred dollars to expend in supporting our schools, and we do not owe any teacher a dollar. We have four or five hundred dollars to our credit, besides a prospect of probably a thousand dollars before December next.

Mr. BROSNAN. I wish to remove an impression which seems to rest upon the mind of my friend from Lyon, (Mr. Crosman,) that this is not a friendly move. I declare to the gentleman that I have no hostile motive whatever respecting this provision, and have been actuated by no such feeling in offering this amendment.

The question was taken on Mr. Brosnan's amendment, and it was not agreed to.

Mr. BROSNAN. I give notice that I shall move that amendment in Convention, and call for the yeas and nays upon it.

Mr. EARL. I move to amend the section by striking out so much as provides that the tax shall be devoted to State and county purposes, and inserting instead, "to the Sanitary Fund during the war."

The CHAIRMAN. The Chair will rule the amendment out of order.

No further amendments being offered, the section was adopted.

THE VOTE UPON THE CONSTITUTION.

Section 10 was read, as follows:—

SEC. 10. All citizens of the United States and bona fide residents of the Territory of Nevada, at the time provided in this Constitution for the first election to be held under its provisions, and who shall possess the other qualifications of electors herein provided, shall be entitled to vote for the election of all officers to be elected at such election, and upon the question of adopting or rejecting this Constitution.

Mr. PROCTOR. I have an amendment to offer as a substitute for Section 10.

The SECRETARY read the amendment, as follows:—

SEC. 10. All citizens of the United States and bona fide residents of the Territory of Nevada on the twenty-first day of March, A. D. 1864, qualified by law to vote for representatives to the General Assembly of said Territory, shall be qualified to vote for or against this Constitution.

Mr. PROCTOR. My object in offering this amendment is to comply with the provisions of the Enabling Act, which I will read:—

SEC. 2. And be it further enacted, That all persons qualified by law to vote for representatives to the General Assembly of said Territory, at the date of the passage of this act, shall be qualified to be elected, and they are authorized to vote for and choose representatives to form a Convention, under such rules and regulations as the Governor of said Territory may prescribe, and also to vote for the acceptance or rejection of said Constitution.

This act was approved March 21, 1864.

Mr. FITCH. I do not exactly see the occasion of this amendment, and I hope it will not prevail. As I understand the Enabling Act, it provides that all persons who were qualified to vote for representatives to the last General Assembly shall be competent to vote for delegates to this Constitutional Convention.

Mr. PROCTOR. Yes, sir, and to vote for or against this Constitution.

Mr. FITCH. But cannot we extend the privilege?

Mr. JOHNSON. It reads that they may vote for or against the Constitution "under such rules and regulations as the said Convention may prescribe." That is the language.

Mr. CROSMAN. I move to strike out the section entirely. It belongs in the schedule. I move that as an amendment.

Mr. JOHNSON. I think the gentleman is mistaken; but even if it does belong in the schedule, it is in the power of the Convention to arrange it afterwards. This appears to me, however, to be the proper place for it, right here in the article on the right of suffrage, because it is prescribing the qualifications of voters. And furthermore, I think my friend from Nye, (Mr. Proctor,) is laboring under a misapprehension as to the purport and meaning, not only of this section, but of the language employed in the Enabling Act. Now, sir, by reference to that act, I find that it is true in part, as stated by him, that the laws which had existed in the Territory shall and do prescribe the qualification of electors in the election of delegates to this Convention. But, sir, beyond that Congressional action has not gone. Beyond that it is left in the power of this Convention to prescribe the qualifications of those who are to vote for or against this Constitution. I will read the provision:—

SEC. 2. And be it further enacted, That all persons qualified by law to vote for representatives to the General Assembly of said Territory, at the date of the passage of this Act, shall be qualified to be elected, and they are authorized to vote for and choose representatives to form a Convention under such rules and regulations as the Governor of said Territory may prescribe.

This absolutely fixes the qualification of voters for that election; and what follows is divided from the first part by a semicolon:—

—"And also to vote upon the acceptance or rejection of such Constitution as may be formed by said Convention, under such rules and regulation as the said Convention may prescribe."

Here are two clauses—one clearly relating to the election of delegates, and the other as clearly relating to voting upon the acceptance or rejection of the Constitution. Such being the fact, I think it is entirely within the province of this Convention to prescribe the qualifications of voters upon this instrument, and from thenceforth. All that Congress proposed to do was to fix the qualifications with reference to the election of delegates to the Convention,

and the representatives of the people so elected were then to have the power to prescribe such conditions of voting thereafter as, in their good judgment, might be deemed proper. And for the reasons which I suggested in the first place, I trust that the motion to strike out entirely will not prevail; and for the further reason, that the section does not conflict with the Enabling Act, I hope the motion of my friend from Nye to amend will not prevail.

Mr. CROSMAN. I was under the impression that this Enabling Act provided for this election, and therefore I thought the section was out of place. After the explanation given by the gentleman from Ormsby I am satisfied, and will withdraw my motion.

Mr. PROCTOR. I look upon this portion of the Enabling Act as giving us power to provide how the election is to be held, but not power to make any rule touching the qualification of voters at all.

Mr. COLLINS. Upon reading this section, I am rather impressed with the conviction that the gentleman from Nye is correct in his interpretation. I will read it all:—

"That all persons qualified by law to vote for representatives to the general assembly of said Territory on the date of the passage of this Act, shall be qualified to be elected, and they are authorized to vote for and choose representatives to form a Convention, under such rules and regulations as the Governor of said Territory may prescribe";—

That is for the election of delegates, and that which follows, providing for the election upon the Constitution, relates to the same persons who were qualified to vote on the 21st of March last. It is a continuation of the same sentence, conjoined by the word "and," as gentlemen will perceive:—

"And also to vote upon the acceptance or rejection of such Constitution as may be formed by said Convention, under such rules and regulations as the said Convention may prescribe."

But in this instance under rules and regulations prescribed by the Governor, but the same persons are to vote under such rules and regulations as the Convention may prescribe. I think the language is very clear and explicit, and that those persons who, under our Territorial laws, were entitled to vote at the time the Enabling Act was passed, by the very reading of that Act will be entitled to vote for the acceptance or rejection of this Constitution.

Mr. JOHNSON. I am very sorry indeed, on this or any other occasion, to be under the necessity of disagreeing with my friend from Storey, (Mr. Collins,) but my convictions are the same now as when I before addressed the Committee on this matter. I cannot conceive that there is any doubt of the power of this Convention to prescribe rules and regulations for the voting on the Constitution. Now, Mr. the gentleman from Nye, (Mr. Proctor,) has sought to make a distinction between a rule and a law. What is a law but a rule? Why, Sir, one of the very earliest writers upon law, in one of the first text-books placed in the hands of the student, defines law to be a rule of action. Upon this point there could, I think, be no question—namely, as to what was the intent of Congress in adopting that section. They had no conception probably of what provisions were contained in our Territorial laws in respect to the qualifications of voters, but so far as Congress has legislated, it has proposed to indicate what should be the manner of electing representatives to this Convention, and when that was done, then the Convention was clothed with the power prescribed in that Enabling Act. Then the Convention, composed of representatives of the people, had authority to say who should vote upon the adoption or rejection of the instrument they were framing, as well as who should vote for the officers thereafter to be elected. From thenceforth was removed from the halls of Congress the power of prescribing to us the rule of action, in respect to the qualification of voters.

I repeat that the word "rule," or "regulation," cannot be construed in any other sense than it would be if the word "law" had been employed instead. Why, sir, it is perfectly preposterous and absurd to say that an instrument shall be framed containing certain propositions, and that while you give a certain class power to vote upon the rejection or approval of that instrument, you at the same time say that the framers of it shall not have the right to declare that certain persons shall be prohibited from voting for the rejection or approval of that instrument, though they may have the right, at the same time, to declare who may and may not vote for officers to be elected under it. It is too preposterous for belief that Congress ever sought to do any such thing. Now, sir, in my mind, there is no doubt that the latter clause in the portion of this section which has been read, invests the Convention absolutely with the power of prescribing the conditions upon which all or any persons shall vote for or against the Constitution, and for officers to be elected under it. For that reason, I think this section should be retained as it now stands. Do not let us assert that Congress has said, much less done, so foolish and inoperative a thing as to prescribe the qualifications of voters upon this instrument.

Mr. DeLONG. Upon examination of this Section 3 of the Enabling Act, I have come to the conclusion that it would be very dangerous to submit this Constitution with a provision regulating the qualification of electors different from what is prescribed in this section. The section says as plainly as anything can be, that all persons qualified by law to vote for representatives to the Assembly at the date of the passage of this Act, which was March 21, 1864, shall also vote upon the question of the acceptance or rejection of this Constitution. Now, why cannot we just as well save the whole matter by amending this section in the old Constitution so as to read in the language of this Act:—

"All persons who are citizens of the United States, and qualified electors, and bona fide residents of the Territory of Nevada on the twenty-first day of March, 1864, shall be entitled to vote," &c.

That, I think, would reach the whole thing. I think it would be unsafe to disqualify a man who was a qualified voter at the time of the election of delegates to this Convention. Perhaps it would be as well to provide that all who were voters on the twenty-first of March, or have since become so, shall be entitled to vote.

Mr. JOHNSON. Will the gentleman read the whole clause, or sentence?

Mr. DeLONG. Yes, sir. It says:—

"That all persons qualified by law to vote for representatives to the General Assembly of said Territory at the date of the passage of this act, shall be qualified to be elected, and they are authorized to vote for, and choose representatives to form a Convention, under such rules and regulations as the Governor of said Territory may prescribe;"—

That is one complete provision, and then follows:—

—"And also to vote upon the acceptance or rejection of such Constitution as may be formed by said Convention, under such rules and regulations as the said Convention may prescribe."

Now, will it be pretended that the Convention may prescribe such rules and regulations as will not allow them to vote at all? It says they may vote under such regulations as we may prescribe, but we cannot prescribe such regulations that they shall not be able to vote at all.

Mr. JOHNSON. We might prescribe rules which would prohibit anybody from voting. I think it is absurd to say that we cannot prescribe whatever rules and regulations we deem proper.

Mr. DeLONG. I say it is absurd, also. We agree, possibly, better than the gentleman supposes. I think we had better pass over that one clause, and give members an opportunity between this time and the next meeting of the Convention, to draft a section which will suit the purpose. I am a little afraid to vote upon it, either one way or the other, as it now stands; I do not think it will answer the purpose. I certainly do not think we can prohibit any man from voting on the Constitution who was a qualified elector at the time of the election of the delegates. I think we have got to say they may vote, and as to permitting any person to vote that was not a voter on the twenty-first day of March, I am not so certain. I will ask for the reading of the substitute of the gentleman from Nye.

The substitute was read.

Mr. DeLONG. What is the objection to that?

Mr. BROSNAN. I do not think it covers the ground.

Mr. DeLONG. I see that a person may have since become a qualified elector, and yet, under a strict construction, he would not be entitled to vote. I think it possible that we are getting the thing mixed. [Merriment.]

Mr. BANKS. This is a much more serious matter than I supposed it was when we first commenced to consider it, and I must say that the spirit of the language here differs very radically from the letter. Now if there is any meaning in the language at all, it provides that those who at the date named were electors, shall have the right to vote upon the adoption of the Constitution. But there is this other, and very important question that I would like to see discussed somewhat, which has not yet been referred to except by the gentleman from Ormsby, (Mr. Johnson,) incidentally; that is, that those who might not have been electors upon that day named, although they would be entitled to vote upon other matters to be voted upon at the coming election to be held for the purpose of adopting or rejecting the Constitution, would not be entitled to vote upon that very question. Now if we construe this Enabling Act as conferring power to vote on this question upon a certain class, and that those upon whom that power is not conferred cannot vote upon it, then we must arrive at the conclusion that those who were not voters on the twenty-first of March last, cannot be permitted to vote at all upon this Constitution. And I understand that the amendment offered by the gentleman from Nye, provides for just that thing—that those who were qualified at that time, shall be allowed to vote upon the acceptance or rejection of the Constitution, and that all other persons who, since that time, may have become qualified voters, shall not be allowed to vote upon that question.

Mr. PROCTOR. I will suggest that a clause has been prepared which will cover that objection.

Mr. FITCH. I desire to call the attention of gentlemen to another clause in this same Enabling Act:—

Sec. 5. And be it further enacted, that in case a Constitution and State Government shall be formed for the people of said Territory of Nevada, in compliance with the provisions of this Act, that said Convention forming the same shall provide by ordinance for submitting said Constitution to the people of said State, for their ratification or rejection, at an election to be held on the second Tuesday of October, one thousand eight hundred and sixty-four, at such places and under such regulations as may be prescribed therein, at which election the lawful voters of said new State shall," etc.

Mr. BANKS. That says "the lawful voters of said new State." I would like to hear an expression of the opinions of gentlemen upon that point before we vote. I would like to hear the section read as now proposed to be modified by the gentleman from Nye.

The SECRETARY read as follows:—

"All citizens and bona fide residents of the Territory of Nevada on the twenty-first day of March, A. D. 1864, qualified by law to vote for representatives to the General Assembly of said Territory, and all who have become qualified voters and electors since that date, shall be qualified to vote for or against this Constitution."

Mr. BANKS. I understand that that covers the ground entirely. It provides that all who

some voters at the date mentioned, whether they have gone out of the Territory, or in any other way have become disqualified under the Territorial laws, or not, shall be allowed to vote, and, also, every person who since that date has acquired a residence and the right to vote in this Territory. I understand that that is the condition of the thing, and, under the provisions of the Enabling Act, I certainly feel that it is indispensable for us to adopt that amendment. As I look at it, it is necessary for us to adopt a provision in conformity with this Enabling Act.

Mr. DeLONG. Why should we leave out that they are "entitled to vote for the election of all officers?" I do not see why that is left out.

Mr. PROCTOR. I think that is provided for in the Organic Act.

Mr. BANKS. I understand that last year the officers were to be elected at the same time that the people voted upon the ratification of the Constitution, but this year I do not understand that there are any officers to be elected at that time.

Mr. DUNNE. From all the lights I have before me in the case, I do not think the last amendment proposed is necessary, nor that it will be in accordance with the Enabling Act. I think one great cause of the difficulty of understanding this subject has been, and is, that gentlemen forget the circumstances under which we are forming this Constitution. We are acting here under very peculiar circumstances. We are forming this Constitution simply and entirely by the permission of Congress. Congress has provided that if we comply with certain restrictions and requirements, which are laid down by the Enabling Act, in framing our Constitution, the President of the United States may, by proclamation, admit the State into the Union, with that Constitution. But there is no power to admit the State unless we do comply in all respects, and it depends wholly upon our having complied strictly in every particular with the Enabling Act. The case is therefore different from that of a community seeking of its own motion to become a State in the Union. In such a case, the Convention might make whatever limitations, rules and regulations they might see fit, because they would have still to go before Congress with their Constitution, and with their rules and regulations in connection with it, and then, if Congress chose to approve of their action, well and good; they would be admitted. Under such circumstances we would have a right to make these experiments—to make whatever regulations and restrictions we pleased, and then take our chances for admission by Congress. But we have no such liberty allowed to us here, as I understand it. The President can only, by proclamation, admit this State into the Union, if the people should adopt the Constitution, when it can be shown that we have complied in every particular with the Enabling Act granting us permission to form that State Constitution. Now Congress has pointed out, as I think, most distinctly, what course we are to follow in this regard. It defines most clearly who the persons are who shall be allowed to vote upon the adoption of the Constitution. It says most distinctly that only such persons shall vote upon that question as were authorized to vote for representatives under the Territorial law at the time of the passage of that Act.

Mr. BANKS. "Only?" Where does the gentleman get that word "only?"

Mr. DUNNE. It limits and defines it as distinctly as it can be done, in these words:—

"And be it further enacted, That all persons qualified by law to vote for representatives to the General Assembly of said Territory at the date of the passage of this Act, shall be qualified to be elected, and they are authorized to vote for and choose representatives to form a Convention, under such rules and regulations as the Governor of said Territory may prescribe; and also to vote upon the acceptance or rejection," etc.

As I understand it, there are no other persons qualified to vote upon this Constitution, and if we allow any other persons to vote upon it, our Constitution will have been unlawfully adopted. And the same would be true if we did not allow all those persons to vote. Now, in the first part of Section 5, which has been referred to by the gentleman from Storey, (Mr. Fitch,) where the phrase "lawful voters" is used, it means, to my mind, not lawful voters under our laws, for the election of all officers, but lawful voters under the Enabling Act, under which this Constitution is framed, and according to this Act, those only are lawful voters who were legally qualified electors for representatives on the 21st day of March last. As I understand it, we have no right to allow any other persons to vote upon the adoption or rejection of the Constitution, and if we do allow other persons to vote, then the election would be fraudulent of itself, and the President would not be authorized to admit the new State by proclamation.

Mr. HOVEY. I understand that the reporters for the press here would like some opportunity to prepare their reports, and, as many of us are pretty well tired out, I move that the Committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the Chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article II of the Constitution, had made some progress therein, and had directed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

Mr. DeLONG. If the Convention is going to hold evening sessions, I propose that we meet at ten in the morning, instead of nine; then we can sit till twelve; meet again at one o'clock,

and sit till five; then take a recess till seven o'clock, and sit in the evening as late as we please. I therefore move that the Convention adjourn till to-morrow at ten o'clock. The reporters must have some time to write out their notes, or we shall be entirely ignored by the press.

Mr. CROSMAN. I move to adjourn till to-morrow at nine o'clock.

Mr. DELONG. Very well, I am agreeable; I am satisfied that I am generally wrong on time. [Merriment.]

The question was taken on Mr. Crosman's motion, and it was agreed to.

Accordingly, at twenty-five minutes past nine o'clock, P. M., the Convention adjourned.

FIFTH DAY.

CARSON, July 8, 1864.

The Convention met at nine o'clock, and, in the temporary absence of the President, was called to order by Mr. KINKEAD, on whose motion Mr. COLLINS took the Chair as President *pro tem.*

The roll was called and twenty-seven members were present. Those who failed to respond to their names were Messrs. Ball, DeLong, Fitch, Haines, Jones, Morse, Parker, Sturtevant, Wellington, Wetherill, Williams, and Mr. President.

Prayer was offered by the Rev. A. F. White.

The Journal of yesterday was read and approved.

During the reading of the Journal the President appeared and took the Chair.

EVENING SESSIONS.

Mr. KENNEDY. Pursuant to notice given yesterday, I offer the following:—

Resolved, That the Convention, on and after this date, hold evening sessions, commencing at seven o'clock, P. M.

The question was stated on the adoption of the resolution.

[Mr. COLLINS in the Chair.]

Mr. JOHNSON [the President.] I had hoped that there would be something said upon this subject by some other member of the Convention, for it occurs to me there are potent reasons why we ought not, at least at this stage of our proceedings, to adopt this resolution. It was probably well enough to hold an evening session as we did last night, but it is within the knowledge of the Convention that a number of standing committees have been created, to some of which, no doubt, will be intrusted matters of great moment, and if these committees are to be of any service to this Convention, it is quite important that they have some time allowed for the purpose of transacting the business delegated to them. Now, if this resolution be adopted, what time will those committees have to consider such business and prepare their reports? We meet here at nine o'clock in the morning, and take a recess from twelve to one o'clock—only one hour—we then sit from one to five o'clock in the afternoon, and then it is proposed by this resolution that we take a recess from five to seven o'clock, allowing only two hours for dinner. Then, if we meet at seven o'clock, under this resolution, our session may be extended indefinitely to any hour of the night. Under that arrangement I think it must be perfectly apparent that no time will be allowed for the labor of committees in the transaction of the business intrusted to them. And, in addition to that consideration, we have here an Official Reporter who has certain laborious duties to perform; and we have also a Secretary, and his assistant, every moment of whose time, it must be evident to gentlemen, is occupied, during our session, in simply keeping the minutes and arranging the papers and documents. The Secretary should be allowed sufficient time to write up his minutes, or he will be unable to give us, the next morning, an intelligible record of our proceedings of the preceding day. After a week or two, when the committees shall have completed their labors, and we find that the Convention has nothing to do but to discuss the matters before it, if it shall appear that the session of the Convention is being unreasonably protracted, it may be well enough to hold evening sessions, but at present it occurs to me that it is altogether unadvisable. I really do not think we shall gain anything by it.

Mr. KENNEDY. I would like to ask the gentleman a question. How long did the Committee on the Judiciary, of which he was a member, sit during the last Convention?

Mr. JOHNSON. There were several members of that committee who did not attend its sessions. At one session I remember there were four in attendance for about a half an hour. Subsequently, Mr. Stewart, the Chairman, made repeated efforts to get the committee together, but failed to do so, except on one occasion. After that the business of the committee was transacted mainly by Mr. Stewart and myself. The committee was not in session, as a committee, to exceed perhaps two hours in the aggregate, but if the members of that committee had performed their duties as they should have done, the committee would have been in session a much longer time. I bestowed a great deal of labor upon the business properly belonging to that committee, and Mr. Stewart did the same, and we then compared notes. It does not follow, however, that the committee ought not to have met, or ought not to have had opportunities for meeting. I hope this resolution will not be passed this week, at least; let us see what progress we make, and then, if we find it necessary, we can hold evening sessions.

Mr. KENNEDY. I will amend the resolution so as to hold evening sessions commencing next Monday.

Mr. JOHNSON. My only objection to that is aside from considerations existing at the present time, that we do not know that there will be any necessity for evening sessions, though I am opposed to the proposition now, yet at some future stage of our proceedings, when I conceive the necessity has arisen, I may be in favor of evening sessions. I prefer to postpone the subject till the necessity shall arise hereafter, if it shall arise.

Mr. TOZER. The labor of the Judiciary Committee of the last Convention, or the result of that labor, is now the property of the people of this Territory, and this Convention has resolved to make use of that public property. The gentleman from Ormsby tells us that individual members bestowed a great deal of labor upon the subject. Very well; we have adopted the results of their labor as a part of our own, and therefore we have all the benefit, without the necessity of losing time upon the subject. I do not know that any new matter is likely to come before the Judiciary Committee, or before any other committee of this Convention, that will so occupy them that we cannot hold evening sessions for an hour or two each evening at least, and so greatly expedite our labors, and bring about an early adjournment. We now meet at nine o'clock, and occupy a considerable part of the time in parliamentary quibbles and pointless debates, which enlighten none of us. If we continue that course we shall prolong the session a week or two unnecessarily, and few of us can afford that.

Mr. DUNNE. I agree with the gentleman who last addressed the Convention, in regard to the time required by the Committee on the Judiciary to make their report. I think they will, in all probability, have ample time, even if we hold evening sessions, to prepare their report between now and Monday, and I do not think there is any chance of reaching that article, in its regular course, before that time. I imagine there is but very little change proposed to be made in that regard, upon the basis of action which we have adopted here; and I think there will be plenty of time for the committee to do all they have to do between this time and Monday. In regard to the Official Reporter, I recognize most distinctly the point made by the gentleman from Ormsby, our worthy President, respecting the additional labor which will be imposed upon him by holding evening sessions, and I will also recognize the propriety of giving him additional compensation, in consideration of such additional labor; and in the event of the adoption of this resolution, I shall propose to pay him one half-day's additional salary for each evening session. I am willing to make this distinction in favor of the Reporter only, for as to these other gentlemen, I do not think if we continue in session in the evening, it will make any considerable or material addition to their labors. I would like to see these evening sessions decided upon, because I think they will shorten our labors very much. As to the Secretary, I also recognize the point that it will be impossible for him to write up his minutes and report them the next morning, if he has to attend here at the desk in the evening; and as we wish to get through speedily, and it is all one thing whether we do it by working an additional time at night, or during the day, I would be in favor of having an additional Secretary to write up the minutes—anything and everything to shorten the session. I hope the resolution will prevail.

Mr. CHAPIN. I have been in favor of having evening sessions, in order to accomplish all we can, if it was any way consistent to do so; but there are many objections urged against evening sessions, and now, as a sort of a compromise, until we can hold our sessions a larger number of hours, I propose this as an amendment to the resolution:—

Resolved, That the daily sessions of this Convention be as follows: From nine o'clock, A. M., to one o'clock, P. M., and from two o'clock, P. M. to six o'clock, P. M.

Thus we gain one hour, in broad daylight, for the business of the Convention, and have the evening before us for the labor of the committees. I am sure that will shorten our labors.

Mr. KENNEDY. I wish to state my objection to that resolution. It provides for a session here, from nine o'clock in the morning till one o'clock in the afternoon—four hours, without intermission or rest—and I do not want to be shut up in this room for four hours at a time. I would prefer, if gentlemen are anxious to give the committees an opportunity to meet, that we should give them till three o'clock some afternoon, or even give them the whole of some afternoon in which to make up their reports, but let us have our night sessions—more frequent sessions, but shorter, at any rate; I do not care whether they are in the night or not. By having more frequent and shorter sessions we shall get through with more business, because, after we have been sitting here three hours at one time, we are all tired out, and unable to do anything well. Besides, this resolution would keep us here during the heat of the day, and I think that is possibly a mistake in the present arrangement. We ought not to meet till two o'clock in the afternoon, and so give all the officers and the committees the time from twelve till two o'clock. That, I think, is the best time to get the committees together; because I remember, at the Convention last year, it was very difficult to get meetings of the committees in the evenings, and we used to call meetings after the adjournment in the morning. I think this amendment of the gentleman from Storey would certainly wear us all out.

Mr. BROSNAN. I will move as an amendment, that we meet at nine o'clock, sit till twelve, and then take a recess till two o'clock.

Mr. BANKS. Does that contemplate evening sessions?

Mr. BROSNAN. It leaves that matter open for the present. I will ask for the reading of the resolution as it would be with my amendment.

The Secretary read as follows:—

Resolved, That the daily sessions of this Convention be as follows: From nine o'clock, A. M., to twelve o'clock, M.; and from two o'clock, P. M., to six o'clock, P. M.

Mr. CHAPIN. I do not like that amendment; it is cutting our time all up. I would rather retain the old arrangement, giving the commitees the whole evening, and in that way they can accomplish much more. Now we only get fairly warmed up, and ready for work in the morning.

Mr. DUNNE raised a question of order, that the original resolution being an amendment of the rules, the amendment of Mr. Crossman was an amendment in the third degree, and could not, therefore, be entertained.

The point of order was not sustained.

Mr. FRIZELL. Industry and close application are good things, but it is within the bounds of possibility to have too much of a good thing. I have never heard of a deliberative body that labored more hours than we do.

Mr. TOZER. And brought forth less.

Mr. FRIZELL. And brought forth less. Why, sir, our fathers, during the war of the Revolution, when there was real danger around them, did not work harder. Ben. Franklin and Sam. Adams and the other great men of that day, did not work harder, even when in the midst of danger. I am working, as we all are, for what I believe to be the best good of my constituents; but, at the same time, I do not wish to sit here and work more than nine hours out of the twenty-four. I really want time to sleep and take my meals, and, as it is an office of some dignity, I want an opportunity occasionally to take a cocktail and smoke a cigar, and get my feet up as high as my head, so as to show that I am a free American citizen. [Laughter.] I hope this resolution and all these amendments will be voted down, and that we shall continue to sit here nine hours a day, as we have been doing. Then, as the gentleman from Ormsby remarked, if it is necessary, towards the close of our labors, to hold evening sessions, we can at any time provide for them.

Mr. TOZER. I suggest that it might be dangerous for the gentleman to get his feet as high as his head, lest his brains should run down into his head. [Merriment.]

Mr. FRIZELL. No danger; I was not born in August, as I have heard my colleague was, consequently I did not melt and all run to feet. [Laughter.]

The question was taken on the amendment offered by Mr. Brosnan, and it was not agreed to.

The question was then taken on the amendment offered by Mr. Chapin, and it was not agreed to.

The question recurred on the adoption of the resolution.

Mr. BROSNAN. I move to amend the resolution by inserting after the word "Convention," the words "until otherwise ordered."

Mr. DELONG. I move to lay the resolution on the table.

The question was taken on the latter motion, and, upon a division, the vote was—ayes, 14; noes, 10.

So the resolution was laid on the table.

[The PRESIDENT in the chair.]

Mr. DELONG. Mr. President, I rise simply to say that "truth crushed to earth will rise again." [Laughter.]

LEAVE OF ABSENCE.

Mr. KENNEDY. I ask leave of absence until Monday noon.

Mr. WARWICK. In view of the industry of the gentleman from Lyon, and his efforts in keeping the rest of us here, I certainly hope he will not lose so much time. [Merriment.]

The question was taken on granting Mr. Kennedy leave of absence till Monday, and it was agreed to.

Mr. HOVEY. I ask leave of absence till Monday.

Mr. BROSNAN. If there are good reasons why gentlemen should be excused, if is, perhaps, well that they should be; but I hope the Convention will consider the importance of the business we have come here to do, and that quite a number of members have not appeared here at all to help us in our deliberations. I certainly am not willing that any gentleman should be excused, unless there is good reason for it.

Mr. FRIZELL. I will state that my colleague who asks leave of absence has a good Christian reason—he was married only about ten days since. [Merriment.]

Mr. DELONG. That is a good reason why he should stay here and send for his wife.

Mr. HOVEY. I have really urgent business which requires my absence.

Mr. TOZER. I hope, if he is going to see his uncle, and his wife, too, he will have leave. [Laughter.]

The question was taken on granting Mr. Hovey leave of absence till Monday, and it was agreed to, upon a division—ayes, 23; noes not counted.

Mr. MURDOCK. In consequence of personal business, and further, perhaps, for the benefit of my constituents at home, I ask leave of absence until this afternoon.

The question was taken, and leave was granted.

Mr. BELDEN. I ask leave of absence from to-morrow morning until Monday morning.

The question was taken, and leave was granted.

SECOND READING OF ARTICLES.

On motion of Mr. DELONG, Article III, entitled Distribution of Powers, and Article IV, entitled Legislative Department, were taken from the general file, read a second time by

and referred to the Committee of the Whole.

Mr. DeLONG. I now move that the Convention resolve itself into Committee of the Whole for the consideration of Articles II, III, and IV.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. DeLong in the Chair,) for the consideration of the several matters referred to the Committee, first resuming the consideration of Article II.

RIGHT OF SUFFRAGE.

The CHAIRMAN. The question is on adopting the substitute offered by the gentleman from Nye, (Mr. Proctor,) for Section 10, of Article II, entitled Right of Suffrage. The Secretary will read the substitute proposed.

The SECRETARY read, as follows:—

Sec. 10. All citizens of the United States, and bona fide residents of the Territory of Nevada, on the 21st day of March, A. D. 1864, qualified by law to vote for representatives to the General Assembly of said Territory, and all who have become qualified voters of this Territory since that time, shall be qualified to vote for or against this Constitution.

Mr. COLLINS. I find that Section 3 of our Enabling Act permits no one to vote on the acceptance or rejection of our State Constitution, except those who, by the laws of this Territory, were entitled to vote on the 21st of March, 1864. But subsequently, in Section 5, the same question is brought up again. I will read a portion of that section:—

Sec. 5. *And be it further enacted*, That, in case a Constitution and State Government shall be formed for the people of said Territory of Nevada, in compliance with the provisions of this Act, that said Convention forming the same shall provide by ordinance for submitting said Constitution to the people of said State for their ratification or rejection, at an election to be held on the second Tuesday of October, one thousand eight hundred and sixty-four, at such places, and under such regulations as may be prescribed therein, at which election the lawful voters of said new State shall vote directly for or against the proposed Constitution.

Evidently, the author of this section had in his mind the six months, or nearly that time, intervening between the 21st of March, or the date of the passage of this Enabling Act, and the second Tuesday of October; and evidently his design is here to give to all persons who may be lawful voters under the Territorial laws, at the time the Constitution is submitted, the privilege of voting on the adoption or rejection of that Constitution. I have therefore drawn up a section, a part of which is as nearly as possible in the language of that portion of the Enabling Act. I will read it:—

Sec. 10. All persons qualified by law to vote for representatives to the General Assembly of the Territory of Nevada on the 21st day of March, 1864, and all other persons who may be lawful voters in said Territory on the first Wednesday of September next following, shall be entitled to vote directly upon the question of adopting or rejecting this Constitution; and further, that all citizens of the United States, *bona fide* residents of said Territory at the time provided in this Constitution for the first election to be holden under its provisions, and who shall possess the other qualifications of electors, herein provided, shall be entitled to vote for the election of all officers to be elected at such election.

I am aware that there are difficulties connected with this subject, inasmuch as it may probably be said that those parties who may be entitled by this section to vote in September, may have infracted some of the conditions prescribed in Sections 1 and 2 of this Article; but I see no way of escape from this direct obligation imposed upon us by the Organic Act, and I think it unsafe, and likely to jeopardize the Constitution if we attempted it; because Congress has made certain provisions, and marked out a certain path for us to pursue, and the President of the United States will not be entitled to proclaim that Nevada is a State in the Union, under the authority given by Congress, even after the adoption of the Constitution by the people, if we do not fulfil, in letter and spirit, all the requirements of the Enabling Act. Now, there may be doubt in the minds of some, whether or not this Section 5 does really contemplate that those parties shall vote on the Constitution who shall have acquired a residence, and become legal voters, subsequent to March 21, 1864—whether or not the writer had that in his mind. For you will readily see that if the provision in Section 5 did not exist, no one but those who were electors on the 21st of March, 1864, would be entitled to vote at the subsequent election. And if the 3d Section did not exist, but the 5th Section only, then all persons who were qualified electors at the time of the submission of the Constitution to the people, and none others, would be entitled to vote upon it. Then there may be a doubt either way, but if such a doubt exists, we have a right to interpret it in favor of allowing those to vote who are qualified under the provisions of this Enabling Act, as well as those who may have become qualified at the time of the submission of the Constitution; and I think the President of the United States, if the matter were brought to his attention, would be of the same opinion. I think it will be safe for us to amend this section as I have proposed, and then adopt it.

Mr. JOHNSON. Now, Mr. Chairman, if I conceived there was any doubt as to who were authorized to vote upon the acceptance or rejection of the Constitution, I should certainly vote for the amendment offered by the gentleman from Nye, (Mr. Proctor). But I do not think this amendment offered by the gentleman from Storey meets the difficulty; because if this section is susceptible to objection, as it stands in the original, without the amendment of the gentleman from Nye, on the ground that it does not give the right of voting to those who are prescribed as voters in the Enabling Act, then, with this amendment, it is liable to the same objection, because it gives the right of voting to others than those defined in the

Enabling Act, as specified in the amendment of the gentleman from Storey, (Mr. Collins). Now, sir, if it be true that those who were legal voters on the 21st of March last, by the laws of the Territory of Nevada, are entitled to vote on the Constitution, it is equally true that nobody else is entitled to vote upon that instrument.

The CHAIRMAN. Does the gentleman from Storey, (Mr. Collins,) offer his amendment as an amendment to the amendment offered by the gentleman from Nye?

Mr. COLLINS. Yes, sir, as an amendment to the amendment.

Mr. JOHNSON. I hope I may be able to make myself understood on this proposition. If we are bound by the Enabling Act, and that does prescribe who shall vote upon the acceptance or rejection of the Constitution, then, I say, you cannot go beyond it, and say that other than those shall vote. I think that is the logical sequence of the proposition. And, for that reason, I say that one of two things is true: either we are invested with the absolute power and authority—as I conceive to be the fact—of saying who shall vote, or else we are bound down by the conditions which gentlemen conceive are contained in the Enabling Act. There is no halting place between these two propositions. We can no more say that others shall vote, who were not legal voters on the 21st day of March last, than we can say that they shall possess other qualifications, such as those which are contained in the Constitution which constitutes the basis of our action. It is unnecessary to go over the ground, or repeat the arguments which were advanced by various gentlemen last evening. The examination I have made of this Act on repeated occasions has satisfied me, at least, that we are not bound and restricted in this respect, and that those restrictions as to the qualifications of voters under the laws of the Territory applied solely to the election of members or delegates to this Convention. I think, therefore, that it is not a tenable proposition to say that if we incorporate a provision admitting to the right of voting others than those, or others in addition to those who were voters on the 21st day of March, 1864, it would operate necessarily to induce a refusal on the part of the President to proclaim our State admitted into the Union. Because, if there were anything in our Constitution inimical or contrary to the provisions of the Enabling Act, the construction would be simply this, that the Enabling Act would take precedence, and override whatever there might be in the Constitution adverse to that Act of Congress; that any such adverse provision in the Constitution would be held in abeyance, and would be compelled to defer to the Enabling Act. The President is to admit us by his proclamation, upon our compliance with certain pre-requisites, amongst which are the adoption of a Constitution that must be republican in its form, and also the adoption of a certain ordinance and ordinances. These are the conditions precedent to our admission. But as to other matters, in which there might seem to be to some extent a conflict between the Enabling Act and our State Constitution, there is no authority existing on the part of the President to refuse, and he would not assume the prerogative of refusing us admission on that account. In these matters, as I have said, the State Constitution would necessarily yield to the superior authority of the Enabling Act.

I care little what the action of the Convention shall be in this matter. If the judgment and sense of the Convention be that all those who were authorized to vote under the laws of the Territory on the 21st day of March, 1864, shall have the power and authority to vote for the acceptance or rejection of this Constitution, be it so; I am not particular about it, save in the matter of consistency. I do not propose, so far as my individual action goes, to prescribe rigid, strict, stringent rules in this Constitution to guide and govern every voter, in every election to be held hereafter, and yet, forsooth, upon the important question of the adoption of this same instrument, to say that persons who could not be allowed the privileges of voting under the terms proposed to be established by it, shall nevertheless have the privilege of coming in and voting under that same instrument, for its acceptance or rejection. That is my position, and I do not think that the Enabling Act has anything to do with the matter at all, or that it binds or restricts us on the subject in any degree whatever.

Mr. BANKS. Either the gentleman from Storey, who has just spoken, (Mr. Collins), and the gentleman from Ormsby, (Mr. Johnson), are both very much mistaken in regard to this matter, or I am; and I would like to find out which, or who, are laboring under this very serious mistake. And in order to do that, if the committee are willing, I would like to ask those gentlemen a few questions. It has been claimed, I think with a great deal of force, by the gentleman from Storey, (Mr Collins), that Section 5 of this Enabling Act provides that every person who shall be an elector at the time the Constitution is submitted, shall be allowed to vote. And he bases his argument, and I think properly, upon these words—I would like to call the special attention of the gentleman from Ormsby while I read them:

The CHAIRMAN. The Chair has no power to command gentlemen's attention.

Mr. BANKS. The election at which the Constitution shall be submitted, the Enabling Act provides, shall be held

"At such places and under such regulations as may be prescribed therein."—

That is, in the Constitution.

—"At which election the lawful voters of said new State shall vote directly for or against the proposed Constitution."

That is, the lawful voters of the proposed new State shall be allowed to vote. Now, I

ask any Order to interrupt the gentleman from Storey, but I ask him, and I ask gentlemen of the Convention, whether these words referring to the electors of the proposed new State do not mean just this—those who, under our own local regulations, are allowed to vote? Certainly there can be no language more clear and plain than that. Now, in addition to that, it is prescribed in Section 3 that

"All persons qualified by law to vote for representatives to the General Assembly of said Territory at the passage of this act, shall be qualified to be elected, and they are authorized, to vote for and choose representatives to form a Convention."

That is one thing, but it is not all. They are also authorized

"to vote upon the acceptance or rejection of such constitution as may be formed by said Convention."

Then, in Section 5, we have a clause which authorizes them to vote, and in Section 3 we have another clause which authorizes them to vote. These things are specifically provided in the Enabling Act, and I want to know why in the name of all that is reasonable we must not comply with them? If we do not comply with the terms of these two sections, so specifically laid down for our government and guidance, I do not think the President of the United States will have any right to admit us as a State by his proclamation. At any rate, I doubt whether he would do so. Therefore I think it is absolutely necessary that we should adopt either the amendment offered by the gentleman from Nye, (Mr. Proctor,) or that proposed by the gentleman from Storey, (Mr. Collins.) I prefer the latter, for this reason, that it embodies the same ideas as that of the gentleman from Nye, but at the same time the gentleman has couched his amendment in the language of the Enabling Act, and thus, I think, has avoided any ambiguity or doubt which might arise under the amendment as proposed by the gentleman from Nye.

Mr. JOHNSON. Whilst questions are in order, will the gentleman allow me to ask him a question, to elucidate this matter?

Mr. BANKS. That is just what I want.

Mr. JOHNSON. If the Enabling Act provides that those who were voters on the 21st of March, 1864, shall have a right to vote for or against the Constitution, is it competent for this Convention to provide that any others shall have a right to vote on the same question?

Mr. BANKS. That is the question in point, exactly, and it brings out the strong point in the whole matter. The gentleman asks me, if I understand him correctly, whether, if the Enabling Act provides that all persons who are qualified by law to vote for representatives to the General Assembly of the Territory on the 21st of March, 1864, shall be authorized to vote for the acceptance or rejection of this Constitution, anybody else can be authorized to vote. Is that the question?

Mr. JOHNSON. Yes, sir; whether we can authorize anybody else to vote, upon the acceptance or rejection of the Constitution. Is it competent for the Convention to enlarge the area of voters, as prescribed by the Enabling Act?

Mr. BANKS. Very good—I say no. It is not competent for this Convention to enlarge the area, as to who shall vote, but it was competent for those who made the Enabling Act, for those who made this Section 3, to make another section—Section 5—and to provide in that Section 5 as follows:—

"The lawful voters of said new State shall vote directly for or against the proposed Constitution."

So, you will see, Mr. Chairman, that while a certain class of voters is provided for in the third section, a larger class is provided for in the fifth section.

Mr. JOHNSON. What does the gentleman understand by that term "lawful voters?" Those who are lawful voters under the laws of the Territory, or under this Constitution?

Mr. BANKS. That is another question in point. "Lawful voters of said new State" is the language, and the gentleman from Ormsby asks what that means. Some claim, and I think the gentleman claims it, that it means those who are authorized to vote under the terms of this Enabling Act. I say that is not what Congress meant. Congress meant by this term, all those who under our local regulations are authorized to vote at the time the Constitution is submitted. It says, "lawful voters of said new State." If Congress had meant only those who were authorized to vote in Section 3, Congress would not have made use of this universal language, but would have said, "those who under the provisions of this Act are entitled to vote." That would be the invariable phraseology in such a case. But they do not use it. They say what they mean, that the lawful voters of the proposed or new State shall be entitled to vote.

Mr. JOHNSON. I think the gentleman misapprehends me. I ask, does he understand that term "lawful" as applying to those who are lawful voters under the laws of the Territory, or those who are declared lawful voters under this Constitution?

Mr. BANKS. Under the laws of this Territory.

Mr. JOHNSON. Then how is it possible that, under this amendment, proposed by the gentleman from Storey, (Mr. Collins,) we can admit, in addition to those who are lawful voters under the laws of the Territory, those who are lawful voters under the Constitution which we propose to adopt?

Mr. BANKS. I do not think that construction is correct.

Mr. JOHNSON. That certainly is the effect of it. I will state the language of the amendment again, with the permission of the Committee. It reads:—

"All persons qualified by law to vote for representatives to the General Assembly of the Territory of Nevada on the 21st day of March, 1864, and all other per-

some who may be lawful voters in said Territory on the first Wednesday of September next following, shall be entitled to vote directly upon the question of adopting or rejecting this Constitution; and, further, that all citizens of the United States, bona fide residents of said Territory at the time provided in this Constitution for the first election to be holden under its provisions, and who shall possess the other qualifications of electors herein provided."

That is, in this Constitution provided—

"shall be entitled to vote for the election of all officers to be elected at such election."

Mr. COLLINS. The first part of it refers to that which is embodied in Section 3 of the Enabling Act. It says—

"All persons qualified by law to vote for representatives to the General Assembly of the Territory of Nevada on the 21st day of March, 1864."

That embodies, in substance, the language employed in Section 3. Then, six months, or nearly that, intervening between the 21st of March and the second Tuesday in October, the time originally fixed for the election upon the Constitution, the writer of this Enabling Act saw the injustice which was being done to all those who would become legal voters in the interim, and he adds the words in Section 5, which are substantially embraced in the following clause:

"And all other persons who may be lawful voters in said Territory."

That is, who may be lawful voters under the laws of the Territory of Nevada. Because the Enabling Act, in Section 3, says that all persons who may be legal voters of the Territory of Nevada on the 21st of March, 1864, shall be entitled to vote, etc., therefore we have a right to suppose that the writer, when he drew the 5th Section, had in view the six months intervening time, and the idea that a considerable number of persons might become voters in the interim, and therefore provided that all other persons who might become lawful voters should be allowed to vote for the acceptance or rejection of this Constitution. Hence we provide, by this amendment, that both classes, or all who come within either description, on the first Wednesday in September, the date when, under the Act supplementary of the Enabling Act, the Constitution is to be submitted, "shall be entitled to vote directly upon the question of adopting or rejecting this Constitution." Now what follows that language has nothing to do with the vote upon the Constitution. The Enabling Act makes no provision in regard to the election of State officers under the Constitution, and this part of the amendatory section is added as nearly as possible in the language of the original Section 10, of Article II, of the old Constitution. That which I have already read has reference only to the adoption of the Constitution, and is drawn, or attempted to be drawn, in conformity with the Enabling Act; all following that, has reference solely to the election of the officers who may be created by this Constitution. I will read that portion:—

"That all citizens of the United States, bona fide residents of said Territory at the time provided in this Constitution for the first election, to be holden under its provisions, and who shall possess the other qualifications of electors herein provided, shall be entitled to vote for the election of all officers to be elected at such election."

Mr. JOHNSON. What do you do with the latter part of this clause? Upon the hypothesis that the Constitution cannot prescribe who shall be the voters at that election, upon what authority do you adopt the latter clause—"and who shall possess the other qualifications of electors herein provided?"

Mr. COLLINS. I will try to make myself clear on this third proposition, if I have succeeded in doing so on the other two. First, we provide who shall be the voters on the adoption or rejection of this Constitution, conforming, we action in that regard to the requirements of the Enabling Act, and then comes in, after the adoption of the Constitution, another clause, which I have just read, in reference to those who are to vote in the election of officers under the Constitution, in regard to which election the Enabling Act is entirely silent, and therefore this Convention, I conceive, is omnipotent on that question. This is an entirely independent clause, as gentlemen will perceive.

Mr. JOHNSON. Then it might be made a new section.

Mr. COLLINS. Yes; but in the old Constitution it is all in one section, and you will find that that requires and establishes the same qualifications for voters in the election of officers as in the election upon the Constitution. It goes on first to specify the qualifications, and says that all citizens thus qualified—

"Shall be entitled to vote for the election of all officers to be elected at such election, and upon the question of adopting or rejecting this Constitution."

Both subjects are embodied in the same section, and I have taken the liberty of doing the same thing here in my amendment.

Mr. BANKS. I am glad the gentleman has explained the matter, and I think we had better divide his amendment into two sections. Here he has provided for voting on the Constitution, recognizing the two classes of voters provided for in the Enabling Act; and he has provided in the latter part, which ought to constitute a separate section, I think, for the exercise of the constitutional right of suffrage under the Constitution, after its adoption. So far as the adoption of the Constitution is concerned, the construction of the gentleman from Ormsby, (Mr. Johnson,) is not, I think, justified by the language of the amendment, and I hope it will be adopted substantially as proposed by the gentleman from Storey.

Mr. DUNNE. I confess that, notwithstanding the lengthy discussion we have had, I am still of the same opinion I was last night. I adhere to that opinion for this reason: I believe that the general rule in regard to the construction of statutes is, that where there are powers granted in any two different portions of the same statute, and where the subsequent portion seems to distinctly and intentionally enlarge or abridge the power granted in the first portion, and

where it was evident that it was the intention distinctly of the Legislature so to do, the subsequent portion of the statute governs. I think gentlemen have been in error, or else I am, in considering that Section 5 of the Enabling Act unconditionally enlarges the powers granted in Section 3. The powers are distinctly recited in Section 3, and Section 5 relates to another subject altogether. Section 3 relates to the right of suffrage; it defines who shall be allowed to vote; and Section 5 applies to another subject altogether, because it does nothing to further, explain, limit or abridge, in any way whatever, the right of suffrage. It relates expressly to a different subject, and whatever else is mentioned in it is mentioned incidentally, because the object of Section 5 is merely this—to empower the President of the United States, by his proclamation, to admit the new State, after it shall have complied with all the provisions and requirements of this Enabling Act. That being the intention of the section, and the words in it relating to the right of suffrage being used only incidentally, I do not think it can be considered as enlarging the powers granted in Section 3. I consider, again, if I understand the gentleman from Ormsby correctly, that I differ with him materially with regard to the powers which the people of this Territory have, by their representatives here in Convention assembled, with regard to limiting the right of persons to vote upon the ratification or rejection of the Constitution which we may adopt here. Because, I conceive, that whatever of political rights we have in this Territory, we derive altogether from the General Government.

Mr. JOHNSON (interrupting). I do not assume that Congress had not the power to restrict us—by no means.

Mr. DUNNE. Will the gentleman state his explanation again.

Mr. JOHNSON. It comes to this: I say that Congress has not done it; not that Congress had not the power to do it.

Mr. DUNNE. Then we still differ; because Congress has defined, I think, what powers we have. That is the point of difference. I hold that the only powers the people of this Territory possess, are derived from the express grant of Congress—that until our Organic Act was passed, we constituted no part of the people of the United States. We had no hand, nor vote, nor voice, in the making or framing of the laws; we had no power in regard to our own local affairs; we had no political rights whatever. The Organic Act is, in one sense, a Constitution to us. It is a charter of rights granted to us by Congress. Congress has the power of enlarging those rights, or of limiting them. The Enabling Act being subsequent to the Organic Act, so far as it contains anything in conflict with that act, is an amendment of it, and supersedes it, and from that I think it follows that we have no rights whatever, except what are expressly granted to us in this Enabling Act. Then the question in my mind is, whether or not Congress has prescribed the persons who are to be allowed to vote on this Constitution; and, then, if my theory be correct in regard to the effect of Section 3—that it does not enlarge the powers granted in Section 5, because it does not expressly relate to the Right of Suffrage, but mentions it incidentally, employing only the words "lawful voters," and not defining what are lawful voters—I think that the word "lawful," there employed, refers back to the third section of the Enabling Act, where the right of suffrage is specifically defined. If that position be correct, and I think it is, I shall be obliged to vote against the amendment.

Mr. FRIZELL. I suppose this debate has continued about long enough, but I propose, nevertheless, to say a few words on the subject. Here we find that Section 3, which section applies almost entirely to the organization of this Convention, to the election of its members, contains certain provisions in regard to voting. Then we find in Section 5, where the Enabling Act directs that the Constitution shall be submitted to the people, that the same language precisely is used, or its equivalent—the phrase "lawful voters"—that we find in Section 3. Now, the query arises, as propounded by the gentleman from Ormsby, (Mr. Johnson), what meaning or construction you are to put upon that term "lawful voters." By taking Section 3 and Section 5 in conjunction, considering both together, I think the construction to be put on the two is perfectly and easily apparent. Then again, when you consider that this Section 3 applies throughout its entire construction, every way, to the organization of this body; that one portion of the section merely says who shall be legal or lawful voters at the time of voting for the delegates to this Convention, and also who shall be eligible as delegates to this Convention, I think it is rendered still more plain. It there declares who are the lawful voters. Now, how are they lawful? Under what laws? What law could it be that should make them lawful voters but the law of this Territory? Of course, Congress knew we had an organization and laws here under the Organic Act which had been passed by Congress, and it must be plain that this term "lawful voters," used in Section 3, refers to voters under the Territorial laws. Now, Mr. Chairman, when we come down to Section 5, you find it reads:—

And be it further enacted, That in case a Constitution and State Government shall be formed for the people of the said Territory of Nevada, in compliance with the provisions of this Act, that said Convention forming the same shall provide by ordinance for submitting said Constitution to the people of said State for their ratification or rejection, at an election to be held on the second Tuesday in October, 1864, at such places and under such regulations as may be prescribed thereon, at which election the lawful voters of said new State shall vote directly for or against the proposed Constitution.

Here we find precisely the same term used—"lawful voters." Now, looking at the matter philosophically, and from the point of law, are we to suppose that Congress, in passing this

Act, on the 21st of March last, intended to declare that the men who were then lawful voters in this Territory should be the only men allowed to vote at an election to be held six months thereafter? Did they intend, in other words, to cut off every man that should become a lawful voter within one, two, three, or four months after that date? Certainly not. Consequently, I think, on the score of reason and good sense in the interpretation of the language, the meaning of the Enabling Act on this subject is perfectly plain.

Mr. CHAPIN. I desire to say just a few words only, in explanation of my views. I think there is no use in trying to get around that third section. We have got to face that, and to provide that every person who was entitled to vote under our laws on the 21st of March last, shall be allowed to vote for or against this Constitution. Now this fifth section contains a further provision, by which we are also to allow every person who is a lawful voter in this new State to vote upon the adoption or rejection of our Constitution—that is, every person who shall have become a voter since the 21st of March, is also entitled to vote. That is my construction; and even if I had to force that construction, I would not punish the people of this Territory by attempting to crowd upon them a Constitution upon which they are not permitted to vote. A great number of men, no doubt hundreds and thousands, have become voters in this Territory since the 21st of March, and to say that they are to be deprived of the privilege of expressing their preferences as to the adoption or rejection of this instrument, would, I think, be disgraceful, and I certainly would not sanction it by my vote. Now this amendment of my colleague, (Mr. Collins,) provides for both classes of voters to which I have referred, and I am in favor of adopting that amendment.

Mr. CROSMAN. I fully and heartily concur with the gentleman who has just taken his seat, that these two classes of voters are fully provided for by this amendment, and that they should have the right of voting upon the acceptance or rejection of this Constitution. I believe that the Enabling Act gives the right of voting to all who may, under the Territorial law, be legal voters at the time the Constitution is submitted. But, if I mistake not, the amendment of the gentleman from Storey provides for another class still—"all bona fide residents." I do not think that language should be there. I can see no good reason for it, unless it is because the same language occurred in the old Constitution.

Mr. PROCTOR. Before the question is taken, I should like to state my objections to the amendment offered by the gentleman from Storey, (Mr. Collins). I look upon the requirements contained in this fifth section of the Enabling Act in a very different light from that in which some gentlemen view them, who have spoken here to-day. I look upon the section as providing simply for the manner in which the election shall be conducted, and I think that matter should be provided for in an entirely different portion of our Constitution from the article in which we are providing generally for the right of suffrage. If you read this Enabling Act carefully, you will observe that it requires us to provide, by an ordinance, for submitting this Constitution to the people, on the second Tuesday of October, or, as it has since been amended, on the first Wednesday in September. We shall have to provide by ordinance for some other matters, and there is where, it occurs to me, this requirement of the Enabling Act should be brought in, and complied with. But so far as relates to that fifth section affecting, in any way, the right of suffrage, as provided in the third section, I cannot, for the life of me, see how that application can be given to it. It looks to me so plainly and clearly expressed in this third section, that I am really astonished that any gentleman should get up here and say that we have a right to vary or do any thing different, or that we have anything in the world to do with the right of suffrage in the elections there provided for, except to comply with that section of the Enabling Act.

Now, if we were going to submit the Constitution, after its adoption, to the next Congress, and ask for admission into the Union under it, it might be well enough to go outside of the provisions of the Enabling Act. But we are going to do nothing of the kind. We have got to comply strictly with the terms of that Act, and if we do not do that, we cannot hope for admission by the President's proclamation. And, sir, I shall move, before the vote is taken on my amendment, to strike out the address, or latter portion of it, for the reason that I do not think we have any right to confer the right of voting upon anybody who becomes a legal voter of the Territory after the 21st of March last. I hope the amendment of the gentleman from Storey will not prevail; and at a proper time, I hope we shall pass an ordinance containing the necessary provisions, in conformity with the Enabling Act, for submitting the Constitution to the people. If this amendment is voted down, I give notice that I will move to amend my amendment, by striking out the latter portion, relative to those who may have become qualified voters subsequent to the passage of the Enabling Act by Congress.

Mr. BROSNAN. I have given this subject some consideration, Mr. Chairman, and the result of that consideration is briefly this: I consider, in the first place, that the terms, so to speak, of this fifth section, are wholly non-essential in this matter, even taking the section in its literal sense. I conceive that, in regard to the adoption of the Constitution which we may frame here, if it be voted upon and adopted by the people and then presented to the President of the United States, it will make no difference how we have regarded that section, because

will not be at all considered. It will not be regarded as material, whatever way the people may have voted, provided they have been legal voters and have given a majority for the Constitution. There are conditions precedent which I think are essentials, and which we have complied with, thus far. Now, it will be remembered that the intention of Congress could not certainly have been to disqualify any voters in this Territory. It must be assumed, that the members of Congress who passed this Enabling Act understood the qualifications required in any Territory of Nevada, to entitle a citizen of that Territory to vote. That may reasonably be assumed, and therefore we may infer that they knew that the time required to become a voter in our Territory, so far as residence is concerned, was six months. And Congress fixed and established those qualifications in this third section, both for those who might be eligible as delegates to this Convention and for those who were to vote for such delegates, as electors. Then the act provides that after that body of delegates, so elected and by such election, have in Convention formed this Constitution for the new State, the legal voters may vote upon the question of its adoption or rejection—that is, the legal voters of the Territory. The act says "the lawful voters of said new State," but in place of that, suppose the words "of said Territory" had been used. It would not have made the slightest difference, and there can be no question that the legal voters of the Territory are intended, for necessarily there could be no State at the time of voting on the question of becoming a State. The language of the act assumes the fact of its being a State the moment the Constitution is framed, and if you follow out that language strictly, no person could vote at all, because there would in reality be no State. I say, then, it would be unreasonable to consider, or to believe, that Congress did intend to disqualify legal voters in this Territory from voting upon the adoption or rejection of the Constitution.

Now, who are the lawful voters? Why, they are the legal voters of this Territory at the time of voting. Besides, the Chair and the Convention will remember, in connection with that, that this Constitution was at first to be submitted in the month of October, a longer period after the passage of the act than was necessary to make a man a qualified elector by residence in the Territory. Is it, then, a possible, or rather, is it a reasonable construction, to say that Congress intended to cut off every person from the right of the elective franchise on no momentous a question, who did not happen at that time to have been six months in the Territory? Is it reasonable to believe that Congress would not consent to allow any man, though qualified by the laws of the Territory, to vote upon a question so important to his welfare, and to the welfare of the community? I cannot come to any such conclusion.

I would prefer to see this section, as proposed by my colleague, (Mr. Collins,) separated, so as to have that portion which relates to the adoption of the Constitution by itself, and that which relates to the first election to be held under the Constitution as adopted, stand also by itself; which would greatly simplify the matter, and then I should be willing to vote for both propositions.

Mr. COLLINS. While I agree in the main with my respected friend the gentleman from Storey who has just spoken, I differ with him entirely upon the construction which he gives to this Section 5 of the Enabling Act. Now, I believe it is a general principle of interpretation that where two sections differ, or come in conflict, or do not perfectly harmonize, the general spirit and intention of the author should be discovered, if possible. Now, what is the general spirit and intention of Congress in giving us this Enabling Act? It is, first, that we shall organize a State government. It provides that electors shall be chosen as delegates to convene here and frame a Constitution. And in making that provision, Congress declares expressly that all persons in the Territory, who are legal voters at the time of the passage of the act, under the laws of the Territory, shall vote for the election of those delegates, and further, following that, that they shall also be permitted to vote for the acceptance or rejection of that Constitution which their delegates may frame. Now, while Congress contemplated giving us a State Government, and a State Constitution, it also contemplated that every legal voter should have a voice in the establishment of that Constitution and State Government. And how often, Mr. Chairman, have you and I, in drafting some document, omitted or failed to insert in the body of the document, some thought or idea which properly belonged there, and when the document was perhaps half written, the thought presenting itself, we have availed ourselves of the first opportunity to throw it into a subsequent portion, without re-writing the document. I take it that this was the way it was in Congress in the drafting of this Enabling Act. When the authors were writing the section providing for the election in October, the thought disclosed itself to their minds that they might be doing injustice to a great body of men who might subsequently to the passage of the act come in, gain residence in the Territory, and become legally qualified electors, and they availed themselves of the first opportunity to throw that provision in, in order to give that class the right to vote also on the acceptance or rejection of the Constitution. And I will show you, I think, by the very language, that that was what it contemplated. It is speaking of the State Government for the new State, and of those who are to be qualified to vote upon its adoption, and here in Section 5 it says:—

"At an election to be held on the second Tuesday of October, 1864"—

The thought coming to the writer of the sec-

under of them towards the election, and the great injustice which would be done to those who would become legal voters in the interim, he then endeavors to remedy the difficulty and remove the injustice, and goes on to say:—

"At such places and under such regulations as may be prescribed therein, at which election the lawful voters of said new State,"—

"Lawful voters!" Now, if it had referred particularly, or only, to those lawful voters described in Section 2, it would have said "said lawful voters." But it goes on, immediately following that, to refer to the State—"the lawful voters of said new State"—so that there should be no misunderstanding. If the writer had contemplated to embrace only those referred to in Section 2, those who were electors on the 21st of March, he would have drawn it to read, "at which election the said lawful voters."

Mr. BROOMAN. In that I agree with the gentleman.

Mr. COLLINS. Then I have certainly misunderstood my colleague. Now, I think it must be plain to the Convention that such must have been the intention of Congress—the meaning of the Committee or member that drafted, and the meaning of Congress in adopting this section. Neither you, nor I, nor any one else, can believe that Congress had a desire to disfranchise any of the lawful voters of this Territory. The aim and object of Congress was, as evinced by the declaration or language used in Section 2, to frame an Enabling Act, coming under the provisions of the Federal laws in respect to the right of voting; and whoever our law has declared to be a voter, Congress, also, by making use of that language, declares to be a voter. Now, I am willing to bow to the will of Congress, and however boneficial we might deem it to be to disfranchise certain classes, I believe that every loyal man here, when he sees it clearly, will be willing to obey the behests of Congress.

But an interpretation so monstrous as has been put by some upon this language, should certainly not be received, if it can be avoided. Shall we, by one stroke, disfranchise perhaps one-half of the voters of the Territory? Who believes that Congress ever dreamed of such a thing? I ask gentlemen to look at it. Of course, if we are forced to it by the plain language of the Act, we must do it; but I say, if there be a shadow of a possible doubt, then we have a right to construe it in favor of those who, according to the opinions of some gentlemen, were intended by Congress to be disfranchised.

Now, as to the proposed division of the section, I should have no objection at all to that. The original Section 10, in the old Constitution, embraces both features, and I have drawn this up accordingly, including the provision for the election of officers, on which subject the Enabling Act is perfectly silent. We are perfectly free to make any provisions we please, our power being omnipotent on that subject, and I have in this amendment blended the two elections together; but it is a very easy matter for the Convention to divide it into two sections.

Mr. PROCTOR. I hope we shall discuss that portion entirely, and put it in the ordinance, which we must pass, to provide in full for the election.

Mr. COLLINS. The ordinance, as contemplated in Section 8, has nothing to do with the election; it is merely to prescribe the mode and manner of the election. The section simply declares that this Convention will submit the Constitution to the people "at such places and under such regulations as may be prescribed therein," but it has nothing to do with the qualifications of the voters, nor with the election of officers.

Mr. PROCTOR. Has the ordinance nothing to do with the Constitution?

Mr. COLLINS. Yes; the ordinance should be a part of, or, at least, with the Constitution. I think I should prefer to have it connected with the schedule.

Mr. JOHNSON. While this discussion embraced only what seemed to be comprehended in the proposed amendments, I was content that the vote should be taken by the Committee without further discussion on my part. But it seems to me that the two gentlemen who have last spoken, in their remarks have taken a wider range. The Committee has been told a great deal about the disfranchising of voters, and the intimation seems to be conveyed that possibly some of those who are opposing these amendments are the advocates of a proposition which would disfranchise a large class, or, at least, a large number of the voters of this Territory. Now, sir, it is only necessary to refer to the original proposition, as contrasted with these amendments, to ascertain whose proposition it is that is going to disfranchise the greatest number of voters.

Either of these propositions comprehend those who are legal voters under the laws of the Territory. Now it is unnecessary for me to tell this Committee that the laws of our Territory require that the voter shall be a resident for four months only. That is to say, under the operation of the amendment, as amended by the original mover of that amendment himself, the gentleman from Nye, (Mr. Proctor,)—under that proposition in its enlarged sense, as originally introduced, only those legal voters who were voters on the 21st day of March last would be entitled to vote on this Constitution. That is to say, only those who had resided in the Territory four months anterior to the 21st of March could vote on the acceptance or rejection of the Constitution. As afterwards amended, on the gentleman's own motion, it extended the privilege to those who had been residents for four months preceding the first Wednesday of September, which occurs, I believe, on the 7th day of September.

Mr. CROSMAN (interrupting.) Six months residence is the term required.

Mr. JOHNSON. It is not material whether it is four or six months; my recollection is that it is four months. At any rate, whether it is four months or six months, necessarily, under the operation of the original amendment, no person could vote upon this Constitution who had not resided either the four or the six months, as the case may be, in the Territory prior to the seventh day of September. And the amendment to the amendment proposed by the gentleman from Storey, (Mr. Collins), is the same in its effect and operation. Now, sir, under this original section, how does that apply? It says:—

"All citizens of the United States, and those who become citizens of the Territory of Nevada, at the time provided in the Constitution for the first election to be held under its provisions, and who shall possess the other qualifications of electors therein provided, shall be entitled to vote in the election of all officers to be elected at such election, and upon the question of adopting or rejecting this Constitution."

Therefore, sir, I say, that under the operation of the section as it stood originally before the committee, all those who possess the legal qualifications provided in the Constitution, and who, at the time of that election, are *bona fide* residents of the Territory, can vote for or against this Constitution. Now, I think it must be quite obvious to the committee that if there be any amendments which would establish a rule operating to the exclusion of a large number of persons in the Territory from voting, they are the several amendments which have been proposed to this original section. That, it seems to me, absolves me from the intimation that I am advocating measures which are going to exclude a large number of persons from voting on this instrument. For one, I am in favor of the original section, and I think that we who advocate it—or I will say myself, for I do not know particularly who there are upon the floor, of this committee, who favor it as it stands—so far as I am concerned, I repeat, it is sufficient merely to explain the operation of these amendments to show that, so far from being in favor of excluding anybody from voting, unless of disloyal character, or such as are included within some of the inhibitions of this Constitution, (and upon such I do not care to confer the privilege mentioned, but prefer that they shall be excluded in conformity with the provisions of the Constitution as we have thus far established them), I am in favor of opening the door to all *bona fide* residents on the day of election. Though he may have arrived within the State only the day before, I am willing to give him the right to vote for or against the adoption of this Constitution under which we expect to live.

Mr. WARWICK. I believe this subject has been already exhausted by those contestants who have been fighting over it for the last four hours, and believing that no further enlightenment can be had upon it, I trust we shall be allowed to have a vote upon it at once.

Mr. DUNNE. The gentleman from Storey, (Mr. Collins,) has indulged in a flight of imagination. Going entirely beyond the literal reading and the spirit of the Enabling Act, he has proposed to dive down into the imaginations of the Congressional Committee which framed that act. He has endeavored, by plausible representation to this Committee, to bring before us what he thinks were the inner motives which probably prompted and actuated that Committee in performing that labor. Now, if that is allowable in the gentleman's case, it must be allowable in mine. His supposition was a very plausible one indeed, but allow me now for a moment to make another supposition. At the time when this Enabling Act was passed, it was proposed that the election to be held under it should take place in October. I suppose all gentlemen present will agree with me, that one great argument in favor of the passage of that Enabling Act was the desirableness of having a new loyal State in the Union, with a loyal representation in Congress, that would be fully and heartily in favor of the Administration and the war. Now, that being the case, and, as I suppose it was, a strong point with Congress in securing the passage of the Enabling Act, let me indulge in the supposition that in putting in this clause limiting the right of voting to those who were voters on the 21st day of March, their intention may have been to cut off the possibility of a large number of persons, coming from the western portions of the United States, who would be opposed to sending a loyal representation to Washington—that their object might have been to provide that none but loyal men should be allowed to have a voice in framing our State Constitution. Thinking, perhaps, that the fate of war would terminate the residence of many disloyal men in these western and south-western States, and drive thousands of them to a residence in this Territory, it is possible that for the purpose of cutting off that immense immigration which was in prospect, that clause may have been put in, providing that none but the old residents, those who were then really interested here, and residents among us, should be allowed to vote. Knowing that we had at that time a loyal majority, there could be no doubt, or possibility of doubt, under such an arrangement, that we should have a loyal representation in Congress—that we should send men there who would heartily support the Administration. Then, again, many gentlemen seem to think that if we overcome the Constitutional scruples of the President in regard to issuing the proclamation admitting us into the Union, that is all the difficulty we have to encounter. But there is a great possibility—for anything is possible if not probable in politics—there is at least a possibility, a bare one it may be, but still a possibility, and one that we must consider, that in the approaching contest the elec-

tion of a President of the United States may be thrown into the House of Representatives. It may be a matter of great moment, therefore, whether or not this State is admitted, whether or not the vote of this State shall be allowed to be cast for the President. And in such an event we have to encounter more than the constitutional scruples of the President; we have to encounter the advantages or the disadvantages of the vote likely to be cast here in favor of this or that particular candidate for the Presidency. I do not think it is probable, and I hope it is not, that the election will be thrown into the House of Representatives, but it is within the limits of possibility, and therefore a thing which we ought to keep in mind.

[Cries of "question, question!"]

The question was taken on the amendment offered by Mr. Collins, as an amendment to the amendment of Mr. Proctor, and it was agreed to.

Mr. CHAPIN. Now, I hope the amendment of my colleague which has just been adopted, as a substitute for that of the gentleman from Nye, will be substituted for this original Section 16.

The CHAIRMAN. That is the question pending.

Mr. JOHNSON. I want to call the attention of the Committee to one matter in this connection. The language is, "shall be entitled to vote for the election of all officers to be elected at such election." Now, I think here is about as proper a place as any other to express our views as to having the election of State officers occur at the same time as the vote on the Constitution. If it is proposed by the Convention to have the election of officers take place at the same time, then let us incorporate the provision in this section; and if it is not the intention of the Convention to repeat that great act of folly which was committed last year—for I can characterize it as nothing less—then let us say so now. This provision, it seems to me, is entirely dependent on that question; and I think the author of the amendment will admit that it can only be in view of the supposition that our State officers are to be elected at the same time, that there is any necessity whatever for incorporating it into the section now under consideration. Therefore, for the purpose of taking the sense of the Committee upon the question, (as I conceive it involves no less than that,) whether or not we shall elect our officers under the Constitution at the time when it is submitted to the vote of the people, to wit: on the first Wednesday in September, I move to strike out the latter part of this section, as it has been amended.

Mr. WARWICK. I understand the gentleman proposes to strike out only so much as refers to the election of officers.

Mr. JOHNSON. My motion is, to strike out entirely the latter portion of the section, beginning—"And further, that all citizens of the United States" &c.,—so that the section will be left in this wise:—

Section 16. All persons qualified by law to exercise representatives to the General Assembly of the State of Nevada on the 31st day of March, 1864, and all other persons who may be lawful voters in said State at the time of the election of the members next after, shall be entitled to vote directly upon the question of adopting or rejecting the Constitution.

The part I propose to strike out can possibly relate only to the election of officers at the same time that the Constitution is submitted.

Mr. HOVEY. I certainly cannot see that the language proposed to be stricken out has any reference to the election of officers at the time the Constitution is submitted for adoption or rejection. It reads in this way:—

"And further, that all citizens of the United States who are residents of said Territory at the time aforesaid in this Constitution for the first election to be holden under its provisions, and who shall possess the other qualifications of electors, herein provided, shall be entitled to vote for the election of all officers to be elected at such election."

It does not seem to me to bear the construction the gentleman puts upon it, and we have got to specify, in some place, who shall be the electors of the officers to be elected under the Constitution.

Mr. JOHNSON. That is already specified, in a previous section, which takes effect immediately after the Constitution is adopted.

Mr. HOVEY. Very well; I am satisfied.

The question was taken on the amendment proposed by Mr. Johnson, and it was agreed to.

The question recurred on the adoption of the section as amended, and it was adopted.

DISTRIBUTION OF POWERS.

Article III, entitled Distribution of Powers, was next taken up by the Committee of the Whole, and read, as follows:—

ARTICLE III.—DISTRIBUTION OF POWERS.

SECTION 1. The powers of the Government of the State of Nevada shall be divided into three separate departments—the Legislative, the Executive, and Judicial—and no persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

No amendment being offered, the article as read was adopted.

LEGISLATIVE DEPARTMENT.

Article IV, entitled Legislative Department, was next taken up by the Committee of the Whole.

Section 1 was read, as follows:—

SECTION 1. The Legislative authority of this State shall be vested in a Senate and Assembly, which shall be denominated "The Legislature of the State of Nevada," and the sessions of such Legislature shall be held at the seat of government of this State.

No amendment being offered, the section was adopted.

BIENNIAL SESSIONS.

Section 2 was read, as follows:—

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday of January next ensuing the election of its members, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation.

Mr. JOHNSON. I will state right here, as there may be some contrariety of views in regard to biennial sessions, that gentlemen will find in the latter portion of this Constitution, a provision made for having annual sessions of the Legislature for the first two years, and biennial sessions. As it was thought proper by the Convention to inaugurate the system of biennial sessions, and as biennial sessions were to be the rule, and annual sessions the exception, it was deemed advisable—and I think there can be no better plan—to adopt the section as it reads here, and then provide subsequently in the Schedule, or in Miscellaneous Provisions, as may be judged best, in what years annual sessions shall be held.

Mr. BROSNAN. My recollection is that of the gentleman from Ormsby on this subject, but I would like to have him refer to the subsequent section, where provision is made for annual sessions.

Mr. JOHNSON. I will refer my friend to sections 14 to 17 of the Schedule, as here printed.

Mr. BANKS. I move to amend the section by adding these words: "except as hereafter provided in this Constitution."

Mr. JOHNSON. I have no objection.

The question was taken, and the amendment was agreed to.

The question was taken on the adoption of the section as amended, and it was adopted.

Section 3 was read, as follows:—

SEC. 3. The members of the Assembly shall be chosen biennially by the qualified electors of their respective districts on the Tuesday next after the first Monday in November, and their term of office shall be two years from the day next after their election.

Mr. BROSNAN. I suggest that this section should be amended. I do not see the utility of the words—"on the Tuesday next after the first Monday in November." Had not we better fix the day directly.

Mr. JOHNSON. The reason of that language is, that it is the day on which the Presidential election occurs. We expected the State Government to go into operation last winter, and gentlemen will find by referring to the "Miscellaneous Provisions," and "Schedule," in the old Constitution, that provision was made that the members of the first Legislature should hold office until their successors should be elected and qualified. Then, this being the first regular election, the next election would occur at the same time, and I think there was great propriety in the arrangement. The same reason which existed then, exist now. The idea is to obviate the necessity of having two elections in the same year on which the Presidential election occurs.

Mr. DUNNE. I suppose, if the Constitution is adopted this fall, we desire to have a representation in Congress, the members of which will be there to take their seats at the opening of Congress. Is it possible to do that under such a provision?

Mr. JOHNSON. Yes, sir. The 9th of September is the time on which the Constitution is to be submitted. Then it will necessarily take two or three weeks to collect the election returns and to transmit the report to the President, who is thereupon authorized to declare the State admitted into the Union. That will throw us necessarily into October, and it would not be possible before the time mentioned for the Presidential election, to hold a political election under the provision of the State Constitution. It will be remembered—and we have the evidence of it before us in the shape of the Enabling Act—that originally it was provided that the vote upon the Constitution should be taken in October; but after the passage of the Enabling Act, as it is here printed, a memorial was prepared and signed by many prominent citizens—the Territorial officers and others—asking Congress to amend that act so far as to provide for the submission of the Constitution to the people at the time of the Territorial election, on the first Wednesday in September. This was done with a view not only to obviate the necessity of holding another election so soon afterwards, but also to give time within which the election could be held, the votes canvassed, returns made, and the State thereupon admitted into the Union, that we might, in part, then enjoy the privileges of a State. I think this may be accomplished, probably two or three weeks before the Presidential election, for we may be advised by telegraph of the action of the President in issuing his Proclamation, and when that act is done, we are at once admitted, and telegraphic information of the fact is sufficient to authorise us to proceed to put the machinery of the new State in operation. That would give time for the assembling of a Convention, and the nomination of candidates, if deemed necessary or advisable, and the presentation of the claims of those candidates before the people previous to the November election.

Mr. DUNNE. The object is, I understand, to have all the candidates elected on the first Tuesday of November; that gives us some eight or nine weeks, and if the election takes place at that time, which will be towards the close of the first week in November, it will then take a considerable time to get the returns of the votes in order to hold a session of the Legislature for the election of United States Senators. Then it will require another month for the Senators, after their election, to get to Washington, and I do not see how we could expect them to get there before the latter part of February.

Mr. JOHNSON. I believe it is advisable to hold the election at the earliest possible time, and in that I agree fully with the gentleman from Humboldt; but I scarcely think under the operation of this provision, as we are to vote in September, and the votes have to be canvassed, the returns made to the President, and his proclamation issued upon those returns be-

fore we are invested with the right of electing any officers, that there is time, under such an arrangement, to enable us to put in operation the machinery of party usage, or to carry it into effect so as to hold an election earlier than the November election. If we are able under the operation of this provision to hold the election at the earliest day, and avoid the necessity of holding so many elections, I would certainly be in favor of having an earlier election, especially in view of the importance of having our members of Congress at Washington as early as possible. But if we postpone the election until November, I think it probable that our members will be able to reach Washington within two or three weeks after the assembling of Congress. That loss of time is one of the difficulties which we must inevitably labor under, from the fact that it is already so late in the season, and it is impossible to get an earlier vote on the adoption of the Constitution by the people. It is an inconvenience which I do not think it is possible for us to obviate under existing circumstances.

Mr. BROSNAN. Could not the matter be relieved of difficulty by a clause in the schedule, providing for a different, and perhaps more suitable time, for the first election under the Constitution, and leaving this section as it is here?

The CHAIRMAN. That question hardly comes up under this section.

Mr. JOHNSON. I will say, rather by way of answering the inquiry—and I am speaking on this subject by the indulgence of the Committee—of course it is entirely competent, if it is deemed proper, to have the election at an earlier day. This, however, should be borne in mind—that it is important to postpone the election of any officers under the Constitution to a period beyond the vote upon the Constitution itself. That is a proposition which I am decidedly in favor of. But there may be a medium time beyond the election upon the Constitution, which might be fixed upon for the first election by a provision incorporated in the Schedule, if the Convention deem it proper. As I said before, this which we are now engaged upon, is the general frame-work, and the exceptions to that frame-work should properly be included within the scope of the Schedule, or the article on Miscellaneous Provisions. Though it may be a little out of place here, I will say that I was heartily in favor of the amendment proposed by the gentleman from Humboldt, (Mr. Banks,) because this is the general frame-work, and any exceptions ought to be incorporated elsewhere, so that there may be no conflict in this permanent portion of the Constitution.

Mr. CROSMAN. There is one other objection to this section, which occurs in the last line, as it strikes me. It says: "their term of office shall be two years from the day next after their election." Now we are aware that it is impossible to know, for a few days after the election, who are elected and who are not. It is all very well for the first election, and perhaps that might be provided for in the Schedule. But in all the States in which I have lived, there has been an interval of at least sixty days after the election before the officers elected took office. I suggest that it be amended so that their term of office shall be two years next after the first day of December, ensuing.

The amendment was not seconded.

There being no further amendment, the section was adopted.

TERMS OF OFFICE.

Section 4 was read, as follows:—

SEC. 4. Senators shall be chosen at the same time and places as members of the Assembly, by the qualified electors of their respective districts, and their term of office shall be two years from the day next after their election.

Mr. STURTEVANT. I move to amend the last clause of the section by striking out the word "two," and inserting the word "four," so that it will read—

"And their term of office shall be four years from the day next after election."

Mr. WARWICK. There appears to me to be very good reasons for that amendment, for, in Section 14, of Article XVIII, I find the following language:—

"At the general election in A. D. 1864, and thereafter, the term of Senators shall be for four years from the day succeeding such general election, and members of Assembly for two years," etc.

Therefore, in order to have some uniformity in this document, it will be necessary to make this amendment, providing that the term of Senators shall be four years.

Mr. JOHNSON. My recollection is that this is a misprint, and that the last Convention adopted the term of four years for Senators.

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

Section 5 was read, as follows:—

SEC. 5. Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one-third, nor more than one-half of that of the members of the Assembly.

No amendment being offered, the section, as read, was adopted.

Section 6 was read, as follows:—

SEC. 6. Each House shall judge of the qualifications, elections and returns of its own members, choose its own officers, (except the President of the Senate), determine the rules of the proceedings, and may punish its members for disorderly conduct, and, with the concurrence of two-thirds of all the members elected, expel a member.

Mr. WARWICK. I move to amend by inserting instead of the word "elected," where it last occurs, the word "present."

The amendment was not seconded.

No further amendment being offered, the section was adopted.

Section 7 was read, as follows:—

...Sec. 7. Either House, during the session, may punish by imprisonment, any person not a member, who shall have been guilty of disrespect to the House by disorderly or contemptuous behavior in its presence; but such imprisonment shall not extend beyond the day of adjournment of the session.

No amendment being offered, the section, as read, was adopted.

OFFICES OF PROFIT.

Section 8 was read, as follows:—

Sec. 8. No Senator or member of Assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections by the people.

Mr. KENNEDY. I move to strike out the words, "nor for one year thereafter."

Mr. JOHNSON. Now, Mr. Chairman, it must be apparent to the members of this Committee that is the object of the incorporation of this provision. I think it is right as it is, and I hope those words will not be stricken out. It is to prevent the creation of offices which can be filled by those persons who themselves create them. Sometimes it may occur that a valuable and important office is proposed to be created by the Legislature, and a combination can be made to secure the passage of the bill establishing such an office by the efforts of the expected incumbent. Under this provision, if the amendment be adopted, the incumbency might be so arranged as to expire within a short time, and then it would, of course, be necessary to supply the office.

Mr. KENNEDY. I withdraw the amendment.

No other amendment being offered, the section was adopted.

Section 9 was read, as follows:—

Sec. 9. No person holding any lucrative office under the Government of the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that Postmasters whose compensation does not exceed five hundred dollars per quarter, or commissioners of deeds, shall not be deemed holding a lucrative office.

Mr. FITCH. I move to amend the section by striking out the words, "postmasters whose compensation does not exceed five hundred dollars per quarter, or," so that the proviso will read:—

Provided, that commissioners of deeds shall not be deemed as holding a lucrative office."

Mr. JOHNSON. I have no objection to modifying this provision, but to strike out the whole clause, I think, is not advisable.

Mr. FITCH. If the gentleman will move to make it "per annum," instead of "per quarter," I will accept it.

Mr. JOHNSON. Very well; I will make that motion, to strike out the word "quarter," and insert the word "annum."

Mr. FITCH. I accept the amendment.

The question was taken, and the amendment as modified was agreed to.

No further amendment being offered, the section, as amended, was adopted.

BRIBERY.

Section 10 was read, as follows:—

Sec. 10. Any person who shall be convicted of the embezzlement or defalcation of the public funds of this State, or who may be convicted of having given or offered a bribe to procure his election or appointment to office, or received a bribe or reward to aid in the procurement of office for any other person, shall be disqualified from holding any office of profit or trust in this State.

Mr. BROSNAN. I move to amend that section by adding the following:—

"The Legislature shall, as soon as practicable, provide by law for the punishment of such defalcation, bribery, or embezzlement, as a felony."

Mr. LOCKWOOD. I move further to amend by striking out the following language:—

"Or received a bribe or reward to aid in the procurement of office for any other person."

I wish to say, in explanation of my amendment, that because I may happen to desire to get some man, whom I believe to be capable, to fill a certain office, or to prevent some man, whom I believe to be incapable, from filling it, and because I may take a notion to spend money in order to get my friend into that office, I do not believe that I ought for that to be disqualified from holding any office of profit or trust in this State. I do not believe that is a consequence which should follow from doing such an act, when I believe I am doing a service to the public.

Mr. JOHNSON. I do not believe that such an interpretation can be given to the section, and I think the whole force and vitality of the section would be impaired, if not destroyed effectually, by the gentleman's amendment. Gentlemen will see how easy it will be to avoid the operation of the provision. Here, for instance, I am a candidate for office.—[a laugh.] Well, there are a good many in the same category, I think. [Merriment.] A man is a candidate for office, and, under the operation of this section, as it is proposed to be amended, he may go and offer a reward to an individual to aid him in procuring the appointment or election to such office. We incorporate a provision here prohibiting him from doing this, but there is nothing which would prevent some other person from acting for him, and thus the whole effect of the law would be destroyed. I hope these words will not be stricken out, for they certainly could not have the application which my colleague has suggested.

Mr. LOCKWOOD. I would suggest that it would take only the same amount of evidence to prove that the candidate was instrumental in getting some other man to offer a bribe for him, that it would take to prove that he offered it himself. It seems to strike at the glorious prerogative of electioneering for a man's friends. If I have a friend whom I believe to be particularly fitted for a particular office, and I have a desire, for the sake of the public good, to get him into that office, I have a right to use all

honorable means to that end, and, if it is necessary, to buy a little whiskey, also.

Mr. HOVEY. Another objection is, that it might cut off some of the revenue of the State in the way of poll-taxes.

The question was taken on the amendment offered by Mr. Lockwood, and it was not agreed to.

The question recurred on the amendment offered by Mr. Brosnan.

Mr. BANKS. I move to amend by striking out, after the word "bribery," the words, "or reward."

It does seem to me that these words would cut off the power or right to contribute money to the funds of a county committee, for instance, for the purpose of securing the election of a particular man. There are a great many legitimate expenses connected with an election. We have to pay for the printing of ballots, and their distribution, and I fear that these expenses might be construed as coming within this provision. I do not know that I am right, but I fear that that would be considered a legitimate construction.

The question was taken on the amendment proposed by Mr. Banks, and it was not agreed to.

The question was taken on the amendment proposed by Mr. Brosnan, and it was agreed to.

No further amendments being offered, that section, as amended, was adopted.

Section 11 was read, as follows:—

SEC. 11. Members of the Legislature shall be privileged from arrest on civil process during the session of the Legislature, and for fifteen days next before the commencement of such session.

No amendment being offered, the section was adopted.

Section 12 was read, as follows:—

SEC. 12. When vacancies occur in either House, the Governor shall issue writs of election to fill such vacancy.

No amendment being offered, the section was adopted.

Section 13 was read, as follows:—

SEC. 13. A majority of all the members elected to each House shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as such House may prescribe.

No amendment being offered, the section was adopted.

Section 14 was read, as follows:—

SEC. 14. Each House shall keep a journal of its own proceedings, which shall be published, and the yeas and nays of the members of either House on any question shall, at the desire of any three members present, be entered on the journal.

No amendment being offered, the section was adopted.

SECRET SESSIONS.

Section 15 was read, as follows:—

SEC. 15. The doors of each House shall be kept open during its session, and neither shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be holding their sessions.

Mr. FITCH. I would like to inquire what would be the interpretation of the language of this section. Does it mean that one body may not adjourn to another place without the consent of the other, or that they cannot adjourn to any other place at all? It seems to me that one construction of this section would be that neither House shall adjourn for more than three days without the consent of the other, nor adjourn, in any event, to any other place than that where they may be holding their sessions.

Mr. WARWICK. Having seen this question tried under rather peculiar circumstances, I think I can enlighten the gentleman. When that contest comes, the House can go where it pleases, as our Chairman very well knows.

Mr. PROCTOR. I would inquire if this language will not preclude either the Senate or the House from holding a secret session. I think it would; and I would ask other members if they do not think it would amount to a prohibition of secret sessions.

Mr. JOHNSON. In my opinion it would, and I am in favor of preventing them, as I was in the last Convention. My view of the subject is, that the Senate and the House are composed of representatives of the people, and therefore they should possess no authority to transact any business of which their constituencies shall not have full knowledge. I do not think there is anything so sacred that can gather about an organized body, termed a Senate or a House of Representatives, which should give it the right to transact any public business whatever, without the people knowing what it is.

The CHAIRMAN. We have had occasion in California to exclude the lobby.

Mr. JOHNSON. Yes, sir. But we have a provision here which you did not have there to protect the Legislature against the lobby. Here that power is given, in a preceding part of this article, which reads:—

Either House, during the session, may punish, by imprisonment, any person not a member who shall have been guilty of disrespect to the House by disorderly or contemptuous behavior in its presence; but such imprisonment shall not extend beyond the final adjournment of the session.

This provision is additional, I believe, to the clause of the California Constitution, and gentlemen who were present during the discussion on this subject, in the former Convention, will recollect that the application of this feature was referred to. As the body has ample protection against any contemptuous or disorderly behaviour, although occurring without the limits of the assemblage, I think it may well be coupled with this other proposition, that neither the Senate nor the more popular branch shall have the power of doing what their constituency or the other branch of the Legislature have not the privilege of knowing.

Mr. HOVEY. Will the gentleman allow me to ask him a question—and that is, whether in

case of a rebellion, it might not be necessary, at some time, to have a secret session?

Mr. JOHNSON. I think that would be one of the great occasions when the people ought to know exactly what their representatives are doing.

Mr. PROCTOR. I would certainly be in favor of making an amendment here, giving the Senate the right to close its doors while doing a certain class of business; as, for example, in cases where the concurrence of the Senate is required in nominations to office by the Governor. In such a case, if the doors were open while the Senate were engaged in discussing the character of the person recommended, there would undoubtedly be a certain amount of restriction thrown around the members of the Senate. I mean that a man would not like to express his opinions as freely in the presence of the whole world as he would if there were merely present except the members of the body. I move to amend, by inserting after the word "session," in the second line, the words "except the Senate, while sitting in executive session."

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

VACANCIES.

Mr. STURTEVANT. Before we go any further, I think we should make a little amendment to Section 12, and I wish to call the attention of the Committee to it, although not strictly in order. ["Leave, leave."] It is this word "shall." The language of the section is—

"When vacancies occur in either House, the Governor shall issue writs of election to fill such vacancy."

I will move, if there is no objection, to amend the section by striking out the word "shall" and inserting the word "may," and I will give my reasons for proposing the amendment. It may be that a member would resign, or a vacancy might be caused, either by resignation or otherwise, within the last few days of the close of the session; and yet by this provision there would be no option with the Governor. It says he "shall" issue the writs of election in any such case, although it might be impossible to have an election before the session would actually expire.

Mr. JOHNSON. The change of words which the gentleman from Washoe proposes is susceptible to this objection: If the Governor is clothed with this discretionary power, it may possibly happen under circumstances such as have occurred in our political experience, not in this Territory, but where political parties have been so evenly balanced that it was impossible to effect an organization of one branch of the Legislature without the presence of all the members of that body, that no organization could possibly be effected without supplying a vacancy through the instrumentality of an election. Under such circumstances, the Governor might chance to belong to a political party differing from the one supposed to preponderate in the place where the election was to be held, and for that reason he might refuse to issue the writ calling such election.

This matter was discussed somewhat in the former Convention, and for these reasons—and I conceive very properly—it was deemed necessary by that Convention to incorporate here the word "shall," or in some way to make it imperative upon the Governor that in case of a vacancy, from any cause whatever, the duty should devolve at once upon him to apply to the people to fill that vacancy, so that no county should be deprived of its just representation in the Legislature. It may be very important that the Executive shall have no power to refuse to provide for such representation. It might never happen that the Executive would do anything of the kind, but it is best to prevent the possibility of such a case occurring.

The question was taken on Mr. Sturtevant's amendment, and it was not agreed to.

Section 16 was read, as follows:—

SEC. 16. Any bill may originate in either House of the Legislature, and all bills passed by one may be amended in the other.

No amendment being offered, the section was adopted.

Section 17 was read, as follows:—

SEC. 17. Each law enacted by the Legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title; but, in such case, the act as revised, or section as amended, shall be re-enacted and published at length.

No amendment being offered, the section was adopted.

FINAL PASSAGE OF BILLS.

Section 18 was read, as follows:—

SEC. 18. Every bill shall be read by sections on three several days, in each House, unless, in case of emergency, two-thirds of the House, where such bill may be pending, shall deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on the passage of every bill, or joint resolution, shall be taken by ayes and noes, to be entered on the journals of each House; and a majority of all the members elected to each House shall be necessary to pass every bill or joint resolution, and all bills or joint resolutions so passed, shall be signed by the presiding officers of the respective Houses.

Mr. BANKS. Is it intended by this section that the ayes and noes shall be taken upon the reading of the bill, or only upon the final passage?

Mr. JOHNSON. Upon the final passage.

Mr. GIBSON. That is what it says.

Mr. BANKS. It says—

"But the reading of a bill by sections on its final passage shall in no case be dispensed with, and the vote on the passage of every bill or joint resolution shall be taken by ayes and noes."

Now, upon the final passage it must be read

by sections, but is it intended that the ayes and noes shall be taken upon each of the readings?

Mr. JOHNSON. The bill cannot be passed but once.

Mr. BANES. Well, I think that would be the reasonable construction.

Mr. PROCTOR. I see one very serious objection here, as it appears to me, and that is, that it requires a majority of all the members elected to pass a bill, and the House might get down so low that, under this provision, one vote might kill a bill. We might have a quorum of only one more than a majority; that is, forty members constituting the House, only twenty-one might be present, and then one man could kill a bill, under this section, as it was read. I move to strike out the word "elected," and insert the word "present."

Mr. JOHNSON. Now, it must be apparent to gentlemen who have had legislative experience, and even to those, also, who have not, what the object of this provision is. It is to prevent a great deal of unnecessary special legislation, and not only that, but to defeat the usual course of proceeding of outside operators. If they have a bill before the Legislature, and that bill has not enough merit in it to secure the votes of a majority of all the members elected, I am, for one, prepared to say that it ought not to pass. I concede the extent of the objection made by the gentleman from Nye, (Mr. Proctor,) that if members are absent from the House in such numbers that it is reduced to a quorum merely, the vote of a single man would defeat the passage of any bill; and, sir, the object of this provision is to reach just such cases, for I have seen, and many others have seen, that when an obnoxious bill came up there would be a general skedaddling of members, who would get out of the way, leaving perhaps less than a quorum to defeat the bill. It was to prevent just such operations as these that I had the honor of drafting this section as it is here, and I hope it will be allowed to remain without any change. The effect of it must be beneficial at least to the people, although it may defeat the machinations of those who are interested in this obnoxious character of legislation.

Mr. WARWICK. I have only one word to say on this question, but I have known of very important instances in point. One of the most important measures which ever came before the Legislature of California, of which I had the honor to be a member, was passed at a time when the absence of a few members would, under this provision, have defeated that measure. I have known a case where one man has absented himself, apparently to defeat the conviction of certain parties whom it was deemed very desirable to convict. Therefore, I would like to see this section amended by substituting the word "present" instead of the word "elected."

Mr. CHAPIN. I hope no amendment will be made in this section, because we rely upon it for protection against those "bummer" bills which are brought up at every session of the Legislature. I hope the section will remain as it is.

Mr. STURTEVANT. I cannot help agreeing with the gentleman from Ormsby, (Mr. Johnson,) and those other gentlemen who have spoken on that side, in the greater part of what they have said; but I desire to call the attention of men who have had much experience in the Legislature of this Territory to the facts as they exist; and I ask them, in all sincerity, if they do not positively know that the most essential acts ever passed in the Legislature of this Territory have been barely carried through by, perhaps, one vote. When there comes up in the Legislature a bill of very great consequence to the public, that is sure to be a measure that has enemies—zealous enemies and warm friends. There is no such thing as a good law but what there are two sides to the question, and often there are two political parties divided upon it, and divided pretty equally. I think, when we cannot rely upon a Legislature of our own choosing, we had better choose again. Although it may work detrimentally, in certain instances, yet I say, "sleepers" are worse than "bummers." I am opposed to letting men run away and shirk the responsibility. I think this amendment is a proper one, and I have spoken only of what I have myself seen in this Territory.

Mr. PROCTOR. I am perfectly willing to admit the force of the position taken by the gentleman from Ormsby, (Mr. Johnson,) in regard to parties who have that sort of bills to get through the Legislature; but it seems to me that a better way to provide against thieving bills can be devised. Under this provision, I can see how a whole session of the Legislature might pass away without enacting a single law, merely because five or six members happened to be absent; and gentlemen will observe that more than that number of members are absent from this Convention now.

Mr. CHAPIN. In such a case, let them move a call of the House and compel the absent members to come in. They can always do that.

Mr. PROCTOR. Not until they have taken the oath of office, I think. If you had but twenty-five members in the House, and a bill came up which five members only were opposed to, you could never get that bill passed. I have more confidence in legislative bodies than some gentlemen here seem to have, and I think the better way is to provide other restrictions against thieving bills.

Mr. DUNNE. The very objection the gentleman urges constitutes one reason why I am in favor of this section. It will prevent too much legislation. The fact is, that whenever the Legislature is in session, the people wait with fear and trembling for it to adjourn, and then they thank God that it is over. [Laughter.]

Mr. FITCH. I do not esteem myself so highly, perhaps, as some of the rest of the gentlemen around me, but I may be pardoned

when I say that I do not think all the honesty, intelligence, and statesmanship that the present Territory and future State of Nevada is ever likely to produce is concentrated in this Convention; and I do not know that we have a right to make imputations upon Legislatures which may be elected after us, or to say that they will not be quite as able, honest, and intelligent as we are.

Mr. BANKS. Yes, we have a perfect right.

Mr. FITCH. I see a disposition, I think, to endeavor to make this Constitution a little too near perfection, not leaving enough to the representatives of the people who are to be elected hereafter. For that reason, I shall vote for the amendment.

The question was taken on Mr. Proctor's amendment, and it was not agreed to—ayes, 7; noes, not counted.

Mr. BANKS. I move to amend the section, by inserting the word "final," before the word "passage," so as to read—"and the vote on the final passage of every bill," etc. I offer this amendment for the purpose of making it correspond with the term supposed to have the self-same meaning which occurs just previous.

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

Mr. DUNNE. I move that the Committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the Chair, The CHAIRMAN reported that the Committee of the Whole had had under consideration Articles II and III of the Constitution, and had instructed him to report them back to the Convention, with some amendments, in which he was instructed to ask the concurrence of the Convention. Also, that the Committee of the Whole had had under consideration Article IV, had made some progress thereon, and had instructed him to ask leave to sit again.

Leave to sit again on Article IV was granted.

Mr. DELONG. I move to suspend the rule regarding Articles II and III to go on file, and that they be now ordered engrossed.

The question was taken on agreeing to the amendments to Articles II and III, as adopted in Committee of the Whole, and the amendments were agreed to.

The question was taken on ordering Articles II and III to be engrossed for a third reading, and they were ordered engrossed.

The hour of 12 o'clock having arrived, the President declared the Convention at recess until 1 o'clock, P. M.

AFTERNOON SESSION.

The Convention met at one o'clock, P. M., and was called to order by the President.

RIGHT OF SUFFRAGE.

Mr. COLLINS. I wish to call the attention of the Convention to Section 8 of Article II, on the Right of Suffrage. I think that article has passed to its engrossment, and I would like to know if it would not be in order now to move a slight amendment.

Mr. BANKS. I hope the amendment will be read for information.

EXEMPTION OF INDIANS.

Mr. COLLINS. I wish to amend the section by inserting a proviso, exempting Indians from paying the annual poll-tax, and I would suggest the propriety of describing the class of Indians exempted, in some way, because here, as in other States, an Indian may acquire property, and settle down like other people, and in that case he should be subject to pay a poll-tax.

Mr. DELONG. I will second the amendment, because the Supreme Court of California have decided that Chinamen are Indians.

The PRESIDENT. The amendment can be made by unanimous consent.

Mr. DELONG. The gentleman might shape his motion so as to instruct the Engrossing Committee to make the amendment.

Mr. BROSNAN. I would suggest further, that in the case of an educated American Indian—because they may become educated, occasionally, since we have provided for institutions of learning—if he becomes, also, a man of property, then if he is to be taxed, it seems to me he should also have the right of suffrage.

The PRESIDENT. I will state, in illustration, that I have knowledge of one instance in point. A member of the Pah Ute tribe is now living here who is an educated Indian, and in the service of the Government, I believe, at a regular salary. There may be other instances of that kind, and I do not suppose it is the desire of the Convention to exempt such persons from taxation. The person of whom I speak is in the service of our Government, in the capacity of an interpreter.

Mr. DELONG. I suggest that the amendment be, to insert the words, "uncivilized American Indians," and then a man of that class would not be exempted.

Mr. COLLINS. In some of the Southern States, the Cherokee tribe of Indians are civilized, and hold property, which is protected by the Government and the laws. The time may not be far distant when the Indians of this Territory may come under beneficent influences, and become a civilized body of men. As soon as that is done, it seems to me that they should become citizens, at least so far as to share in the support of the Government. I think, by using the words, "wild American Indians," or "uncivilized Indians," we shall make a clear distinction between the Chinese, Kanakas, and Mongolians, and the Indian tribes whom we do not desire to tax.

Mr. BROSNAN. In the California Constitution they have provided that enlightened and educated Indians may be permitted to exercise the right of suffrage.

Mr. COLLINS. I believe that the motion is that the Engrossing Clerks be instructed to insert those words. I will modify the motion so as to read, "wild and uneducated Indians."

Mr. BANKS. I think "uncivilized" is best —"wild, uncivilized, and uneducated Indians."

Mr. BROSNAN. The corresponding section of the California Constitution reads thus:—

Every white male citizen of the United States, and every white male citizen of Mexico who shall have elected to become a citizen of the United States, under the treaty of peace concluded and ratified at Guadaloupe on the 30th day of May, 1848, of the age of twenty-one years, who shall have been a resident of this State six months next preceding the election, and of the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which may now, or hereafter may be, authorized by law; provided that nothing herein contained shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage, Indians, or the descendants of Indians, in such special cases as such portion of the Legislative body may deem just and proper.

The PRESIDENT. That only has reference to the right of suffrage.

Mr. BROSNAN. Yes, sir.

Mr. COLLINS modified his amendment so as to move that the Committee on Engrossment be instructed to amend Section 8, (formerly Section 9), of Article II, entitled "Right of Suffrage," by inserting the words "uncivilized American," before the word Indian, so that the section would read:—

Sec. 8. The Legislature shall provide by law for the payment of an annual poll-tax of not less than two nor exceeding four dollars from each male person resident in the State of the age of twenty-one years or upwards, uncivilized American Indians excepted; one-half to be applied for State, and one-half for county purposes; and the Legislature may make such payment a condition to the right to voting.

Mr. LOCKWOOD. I desire to ask one question for information. Under this section, would the Legislature have the power to exempt sick or indigent persons from the payment of a poll-tax?

The PRESIDENT. The Chair thinks not.

Mr. LOCKWOOD. Then I desire to amend, or rather I will throw it out as a suggestion, that an amendment should be made in that respect.

The PRESIDENT. The section can only be amended at this stage of the proceedings, by unanimous consent.

Mr. LOCKWOOD. I merely desired to call attention to the fact, because the Constitutions of most of the States which I have examined, have a provision of that kind in them.

Mr. KINKEAD. I think the amendment suggested might be submitted, with the other.

Mr. HAWLEY. I submit whether it would not be better to allow this whole matter to lie upon the table until we reach it in the regular course of business, and then let us examine it thoroughly. With all due deference, I will move to lay the subject on the table.

Mr. COLLINS. If it should happen that I should not be present when this article comes up again, will the gentleman see to it that such an amendment is brought before the Convention?

Mr. HAWLEY. Certainly, I will, if I am present.

Mr. COLLINS. Then I am willing to withdraw my motion.

The PRESIDENT. Does the Chair understand that there is unanimous consent to the amendment proposed by the gentleman from Ormsby (Mr. Lockwood)?

Mr. KENNEDY. I cannot agree to give unanimous consent, for the reason that I should be opposed to such an amendment.

Mr. LOCKWOOD. I do not wish to offer the amendment now; I only called attention to it.

The question was taken on Mr. Collins's motion, and it was agreed to.

EXECUTIVE DEPARTMENT.

Mr. DUNNE. I move that the Convention resolve itself into Committee of the Whole, the President remaining in the Chair, for the further consideration of Article IV, entitled the Legislative Department.

Mr. KENNEDY. I think it would be well, before putting that motion, to read Article V, and refer that also to the Committee of the Whole. I think we may get through them both, to-day.

Mr. DUNNE. I will withdraw my motion, for that purpose.

On motion of Mr. KENNEDY, Article V, entitled Executive Department, was taken up, read a second time by title, and referred to the Committee of the Whole.

LEGISLATIVE DEPARTMENT.

Mr. DUNNE. I now renew my motion that the Convention resolve itself into Committee of the Whole, for the consideration of the residue of Article IV, entitled Legislative Department, the President remaining in the Chair.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, the President remaining in the Chair, and resumed consideration of Article IV, entitled Legislative Department.

Section 19 was read, as follows:—

Sec. 19. No money shall be drawn from the Treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public money shall be attached and published with the laws at every regular session of the Legislature.

No amendment being offered, the section, as read, was adopted.

SPECIAL LEGISLATION.

Section 20 was read, as follows:—

Sec. 20. The Legislature shall not pass local or special laws in any of the following enumerated cases, that

salary; regulating the jurisdiction and duties of Justices of the Peace and of Constables; for the punishment of crimes and misdemeanors; regulating the practice of courts of justice; providing for changing the venue in civil and criminal cases; granting divorces; changing the names of persons; vacating roads, town plats, streets, alleys, and public squares; summoning and impanneling grand and petit juries, and providing for their compensation; regulating county and township business; regulating the election of county and township officers, and their compensation; for the assessment and collection of taxes for State, county, and township purposes; in relation to fees and salaries; in relation to interest on money; providing for opening and conducting elections of State, county, or township officers, and designating the place of voting; providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities.

Mr. BANKS. I move the following amendment: after the words "streets, alleys, and public squares," insert the following:—

"And the granting of franchises for the construction of toll-roads, toll-bridges, and street-railroads."

There are enumerated in this Section 20, a number of things, upon which it is designed to prevent special legislation. Now, I am not willing to concede that all special legislation is wrong, and I therefore desire to see some such section adopted, and to see those things where there obviously should be no special legislation enumerated. Among those things, I think, should properly stand street-railroads, toll-bridges, and toll-roads. There is no material provision concerning the construction of a toll-road in one part of the country which will not apply to another part of the country, and therefore it can all be provided for in a general law, leaving it to the Supervisors or County Commissioners, or whatever officers we provide for in that connection, to determine who shall enjoy such privileges under a general law. And the same remark applies to toll-roads, toll-bridges, and street-railroads.

Mr. FRIZELL. I rise for information. This section says that the Legislature shall not pass local or special laws in certain cases, and then the cases are enumerated. One clause of it seems to refer to the fees and salaries of county officers. Now, it appears to me, that, although it might be possible to fix the fees of office at a uniform rate, yet, in cases where they are paid by salaries, those salaries must necessarily be different. In the county of Storey, for example, the county officers should have greater salaries than the same officers should be allowed in the county of Churchill, or some of the other counties.

Mr. BANKS. I will endeavor to make an explanation on that point, and it is one which covers a great many other things in this section. The point which the gentleman makes, as I understand him, and I hope I shall be corrected if I am wrong, is this: How can we provide a general law, or how can we make or cause to be made, a general law which will provide equally for the salaries for the same officers in different counties where the duties are different? Now, take the case, if you please, of the County Recorders. Suppose we provide that the County Recorders shall be compensated by salaries instead of fees, as they did in San Francisco, doing away with the fee system entirely, and adopting a salary system instead. Suppose we say the Legislature shall pass a law providing for salaries, instead of fees. Then, the way it would be adjusted would properly be, that where the receipts are greater, the salaries should be greater in proportion. Of course, the general expenses of the office would be paid from the fees, and the salaries would be paid from the county treasury. The fees being paid into the county treasury, the Legislature could provide that in cases where the fees so paid by the County Recorder reached a certain amount, the salary should be so much, and where the fees reached another certain amount, it should be so much more, regulating the matter upon a scale very much like that established in the matter of mercantile licenses. In that way they could have a general law which would be adapted to the wants of each particular county, no matter what amount of business was done in such county.

Mr. COLLINS. Take the case of a Post Office, for instance.

Mr. BANKS. Yes, sir; that is an illustration exactly in point; I did not think of it.

Mr. FITCH. I wish to express my opposition to this amendment. I think that the granting of toll-road and bridge franchises, when granted at all, should be left to the Legislature; and I suppose the gentleman does not propose to prohibit them altogether, but only to leave them to the local authorities—the various little local Legislatures of the respective counties;—and I have to say, in respect to that, I am of opinion that franchises of that kind are absolutely necessary to the development of a new country, and the granting of them can be left with greater safety to a Legislature consisting of from fifty to seventy-five men, and often a larger number, than to a Board of County Commissioners, consisting of only three, five, seven, or nine men. For that reason I oppose the amendment.

Mr. HAWLEY. I observe that in the Schedule, it is provided that—

"Bodies corporate, including counties, towns, and cities, shall continue as if no change had taken place; and all process which may issue under the authority of the Territory of Nevada, previous to the admission into the Union as one of the United States, shall be as valid as if issued in the name of the State of Nevada."

And Section 2 provides as follows:—

SEC. 2. All laws of the Territory of Nevada, in force at the time of the admission of this State, not repugnant to this Constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the Legislature.

Now, sir, it occurs to me, although I may be jumping hastily to the conclusion, not having paid especial attention to the subject heretofore, that if we incorporate a provision that the Legislature shall have no power to grant these franchises, by that act, the several acts of incorporation under the local and special laws

existing at this time on the statute books of the Territory of Nevada, granting to those bodies corporate, enumerated as counties, towns, and cities, certain powers, become, to a certain extent, at least, invalidated.

Mr. BATES. No, sir; they have their vested rights.

Mr. HAWLEY. Well, even if that view is correct, still I am very much disposed to think, taking into consideration the immense value of many of the franchises which have been granted to individuals, and bodies corporate—for many of them are extremely valuable, and held by legislation as individual property, without any act of incorporation—I say, it appears to me that we are imperiling the rights of the owners of such property. Now, sir, any intelligent man who will take into consideration the cost of the construction of the Kingsbury Grade or the King's Canon road, or many other of our toll-roads which have helped to give an access to the world outside, and by that means have conferred such incalculable benefits upon the Territory, will, I think, come to the conclusion that these public benefits are such as should entitle the holders of those franchises to every safeguard which can be thrown around their rights. It certainly cannot be the wish of this Convention, nor, I think, of any member of it, to interfere with their rights in any way, shape, or form.

Now, sir, taking it for granted that my first supposition was founded neither in law, nor fact, nor reason—setting that aside altogether, still, I say, that, by this provision, we take the power of granting and regulating these and similar franchises out of the hands of a body infinitely better capable to legislate upon and determine with propriety the question of a renewal of any franchise, than would be, by any possibility, a board of county commissioners, composed of two, three, four, five, or six members, as they are now, or may hereafter be organized in this Territory; and I say there is danger that we may imperil the rights of men who have in good faith invested large amounts of capital in these important enterprises, and who deserve, instead of the hue and cry which has been raised against franchises, the thanks of the community. These franchises have been of almost incalculable value to the Territory. By means of them, public works have been constructed, under the only auspices which could have resulted in their construction, and, in consequence, we to-day occupy a position far superior to that which we should have occupied in respect to our general prosperity, to say the least of it, without these franchises.

It would be a very dangerous movement, it appears to me, notwithstanding the various allegations of fraud and corruption which have been made from time to time, to transfer the control of these franchises to the hands of county commissioners in this Territory. Already charges of fraud and corruption have been brought against these last named bodies, and grand juries have been sitting upon and investigating their deeds. They have been examining and inquiring carefully into the acts of certain boards of county commissioners, and in some cases they have reported adversely upon the acts of such boards, although they have been governed in a few cases, it may be, by a disposition to allow members of those boards to retrieve their past errors, more than by a sense of duty in the premises, which would have impelled them to present those members to the authorities by indictment. I say, with such a condition of affairs extant in this Territory, it is infinitely better that we should leave the disposal of these enterprises, in which so much money has been and is continually being invested, and the prosecution of which has contributed so much to promote the interests of this Territory, to a legislative body coming fresh from the whole people, consisting of men who are well prepared to determine the rights of applicants, and who will be more disposed, if I may say so without reflection upon the character of the people of this Territory, to do justice in granting or regranting these rights, than any little body of county officials can be.

Now, sir, I submit my first proposition to the consideration of the Convention, and, of course, I shall yield to their views upon it. If it be disputed, I freely admit that I am not prepared to assert or maintain that it is correct; but I say that on the face of it, it would appear that by incorporating this provision suggested by the gentleman from Humboldt, (Mr. Banks), we should be interfering with vested rights; and I repeat that, in my opinion, we should be taking the matter from the hands of the body infinitely better calculated to do justice to applicants, and placing it in the hands of bodies, which do not, to say the least, stand fair and above reproach in the different communities in which they exercise their functions.

Mr. HOVEY. As salaries have been mentioned in this connection, I would like to move, when it shall be in order, to strike out so much of this section as relates to salaries.

The CHAIRMAN. The motion would not be in order at this time.

Mr. COLLINS. I am decidedly in favor of the amendment of the gentleman from Humboldt, (Mr. Banks). The great curse that has afflicted this Territory, and that afflicts every State and Territory where it is not prescribed by law, is this matter of special franchises. I am therefore in favor of prescribing it, so far as it can possibly be done consistently with the wants of the public. Now we had thought that the two Legislatures of this Territory, preceding the last, had given away everything that could be given; but if you look at the proceedings of the last session of the Legislature, you will find that nearly one-third of all the acts of that body consisted in the giving away of franchises and special privileges, to individuals who were lobbying about the Legislature

that why should not these matters be conducted in such a way as to allow these franchises and privileges to be equally open to every citizen? The first Legislature granted numerous special railroad franchises; and what is the result? Why, sir, those franchises have been knocking at the doors of capitalists for three years past, and still our railroads have not been built. And if they remain in the same hands, they will not be built for, perhaps, ten years to come, and possibly never; whereas, if there had been a general law on the subject of railroads, a party could go and locate his road, and set his men to work upon it without delay, and I venture to say that, between the valley of Washoe and Eagle Valley, and the valley of the Truckee, we should to-day have been enabled to hear the steam-whistle, and see the locomotive trampling up and down upon the iron rails. I say this special legislation ought at once to have the brakes placed upon it, so far as the public safety will admit.

Open, if you please, the lids of the volume which contains the enactments of the last Legislature, and there you will find some thirty-four or thirty-five special acts, in that neighborhood at least, providing for the building of toll-roads and toll-bridges, for floating logs down the rivers, etc. They have left nobody else a right, even if they own ever so much upland, to float logs down the adjacent streams; but, by these special franchises, they have locked up the stream as effectually as if they were chained by it. The amendment proposed by the gentleman from Humboldt puts a veto upon this kind of legislation. It goes still further; it not only prohibits this special legislation, in respect to building bridges and toll-roads, but it goes into the cities, and attacks that other system of monopoly, in regard to the railroads which traverse the streets of cities and towns. I would like to see the system of free competition extended to water-works, gas-works, and hundreds of other things which I might mention, in regard to which, in my judgment, there should be no special privileges granted. Let them all be open to every citizen.

But it is suggested that if a railroad is built across the country, between certain points, somebody else will find an adjacent line upon which he can build another and competing road, which will injure the one first constructed. Now, when capitalists invest their money, they invest it with their eyes wide open, and they will exercise more judgment when they are investing it under general laws than they would manifest by coming here to lobby for franchises under a system that would tie them up forever. A railroad from here to Virginia has been proposed. Now, suppose that road was built; then, I say, if capitalists will run the risk of running another road over the same route, by all means let them do it. The owners of the first road have pushed it forward at their own risk, and let the others do the same. I have no fear but that the common sense and judgment of business men will be sufficient for their protection, and, in the end, these matters will regulate themselves. I have no fear of any bad consequences likely to result from leaving them to regulate themselves, and I am decidedly opposed to special legislation. The fact is, we are already legislating too much, and the sooner we put the brakes on the wheels, the better for us and for the new State we desire to establish.

Mr. FITCH. I do not see that the amendment offered by the gentleman from Humboldt is calculated to reach the evils of which the gentleman from Storey, (Mr. Collins,) complains. The amendment of the gentleman from Humboldt is merely to the effect that the Legislature shall not have power to pass special laws granting franchises for toll-bridges, toll-roads, and street railroads. It says nothing whatever about the navigation of rivers or about gas pipes and water pipes, and those other and various evils concerning which my colleague complains; and I do not think it reaches even what it is intended to reach. It simply proposes to take the power of granting franchises from the Legislature and to vest that power in bodies of less responsibility, because they are less numerous.

Mr. COLLINS. Under general laws.

Mr. FITCH. Under general laws, of course; but under general laws by which you give this power to County Commissioners.

Mr. BROSNAN. I call attention to the next section, which supplies the omission to which the gentleman refers.

Mr. FITCH. I perceive it, but in regard to special legislation I do not agree, Mr. Chairman, with the views which have been expressed. I think there is nothing so well calculated to develop and open up a new country as this very special legislation, about which so much has been said. I think that the present system of granting toll-road and toll-bridge franchises, while it has its evils, secures more than compensating benefits. If these franchises had never been granted, and these roads and bridges never built, the country would not have been developed as it has been. It is true that lobbyists do surround legislatures, but that is an evil inseparable from the existing condition of things. I do not see any way to avoid it. I think that the good prevented from being done by this amendment of the gentleman from Humboldt would be greater than the evil it proposes to destroy, and for that reason I oppose the amendment.

[Mr. DeLoss in the Chair.]

Mr. JOHNSON. I desire in the outset, Mr. Chairman, to be understood in this, that I am opposed, as a matter of principle, to the whole system or scheme of special legislation, and, so far as it can be made applicable, I desire all legislation upon those several matters to be general in its character. But it will be seen, I think, that general legislation, on the subjects embraced in the amendment of the gentleman from Humboldt, (Mr. Banks,) cannot be made applicable. Now, let us suppose a case, in connection with

toll-roads and bridges. These are subjects upon which a great deal of legislation has been had heretofore, and general laws, similar to such as are now proposed, have been enacted. The power has ordinarily been lodged in a Board of Supervisors or of County Commissioners to grant franchises of this nature, under certain restrictions and regulations. We all admit, in the first place, that in very many cases these special franchises are beneficial to the public, and very often they inure to the benefit of the public in a much greater degree than they do to the profit of the individuals who undertake the enterprises contemplated by such franchises. Now, in respect to toll-roads and bridges, it will be seen that difficulty will be encountered in the delegation of the power of granting franchises, under any general law which can be devised. The controlling power must necessarily be conferred upon some general authority. Take the instance of a toll-road passing through more than one county, and suppose the franchise for such road is to be granted by the authority of the Board of County Commissioners or Supervisors of the counties where the work is located. Suppose, and it is no unreasonable or improbable supposition, that one county may happen to be in favor of granting the franchise, but the other is opposed to it; or that there is a conflict of private interests—that whilst one county is in favor of giving the franchise to one applicant, the other county is equally as favorable to granting it to another applicant. In that manner, the granting of a franchise, which might have resulted in conferring incalculable benefits upon the public, would be utterly and entirely defeated by the practical defects of the law.

It is only necessary for me to refer to the provisions of the California Constitution, and the legislation of the last session in that State, to illustrate my views on this subject. I will instance a case, which now occurs to my mind. An application was made to the Legislature of California for a franchise for a toll-road from some point in Amador County to the newly-created county of Alpine. It was brought to the knowledge of the Legislature, that the authorities of the counties in which the road was to be constructed refused to concur in their action in regard to it, and thereupon, in a manner which I conceived to be entirely contrary to the spirit of their State Constitution, the Legislature proceeded to regulate that matter. I believe that, in accordance with a just interpretation of the Constitution of California, their hands were so tied, that they were not at liberty to grant any such special franchise, but nevertheless, they did pass the bill asked for. The Governor, for constitutional reasons which he alleged in his message, vetoed the bill, but upon arguments advanced and reasons assigned in the Legislature, that, and other similar bills, received the necessary constitutional majorities and became laws, notwithstanding the Governor's objections. There have been in California, undoubtedly, instances where beneficial enterprises would have been defeated by the legitimate operation of a constitutional provision like this now under consideration, and it is not unreasonable in our own case to suppose that there may be similar cases arising in the State of Nevada.

Again, take the case of bridges. There are streams which at present do not mark the boundaries of counties, but they may do so in the future, as our population increases. Consider the Truckee River as a boundary between two counties, for example. Every gentleman familiar with that stream, knows the fact that it is impossible, at most seasons of the year, to cross it without a bridge or a ferry. Now suppose a county were organized on one side of the Truckee River, and another on the other side, in that valley, and in that condition of affairs, a person or a company desired to build a bridge across that stream. Application is made to the local authorities of the two counties, but the authorities of one county reply that citizens of their own county shall have the franchise, while those of the other county insist that some of their citizens shall have it, and consequently refuse to concur in the action of their neighbors; so there is, and can be, no united action had in the matter. Although the public necessities demand the construction of the work, yet the public interests are sacrificed, and the enterprise defeated by the incorporation of a feature of this kind into our Constitution.

Mr. COLLINS. Will the gentleman allow me to ask him a question?

Mr. JOHNSON. Most undoubtedly.

Mr. COLLINS. I would ask if there is anything in this rule, as prescribed in the Constitutions of most of the States, which would prevent the Legislature from providing, by a general law, for the regulation of toll-roads, so that where a road passes through two or more counties, its construction can, nevertheless, be provided for? I think it may be done in the same manner as in the case of railroads. There are general laws in relation to railroads which prescribe the mode in which property shall be condemned, etc., and I ask if the same rule could not be applied to toll-roads, by a general law framed under the sanction of the Constitution?

Mr. JOHNSON. I can see that, under the operation of the proposed amendment, cases might arise which no legislation could reach. Take, for instance, the county of Ormsby and the county of Douglas. Here is a road to be constructed material to the welfare of each; but those counties are jealous of their respective rights, and if it is proposed to incorporate in the law a provision that the county of Ormsby shall have the right to dispose of and regulate the franchise, the county of Douglas, naturally jealous of its rights, will oppose such a provision, and it would not be likely to pass. And the same would be the result, for the same reasons, if the case were reversed

the consequence would inevitably be, that no law could be placed upon the statute-books which would be practically operative in such cases. I can conceive that many cases of that kind would be likely to arise, in the event of the adoption of the proposed amendment. I repeat, that I am willing to go as far as the farthest in preventing special legislation, wherever it is practical to do so, but not further than such prohibition can be rendered of practical utility. The moment you transcend that limit, I am opposed to taking another step in that direction.

Something has been said about our Territorial Legislature having granted franchises. Well, they have been pretty liberal in that respect; but in reference to the failure to build railroads under the franchises granted, I can suggest a better reason, I think, than has been given, why such franchises have been unimproved, and that is, not because too much power has been given by these franchises; not because peculiar privileges have been granted, and because everybody else could not enjoy the same privileges, but quite the contrary; the true reason, I conceive, is exactly the reverse of that—because everybody could enjoy the same privileges in the future, if the Legislature deemed it proper to grant them the same privileges. I have had some little experience in these matters. And, by the way, I may be allowed to say, in this connection, that a bill, granting certain franchises and creating a corporation, was passed at the last session, in which my name was used as one of the corporators, but I had no knowledge of it at the time, and I soon thereafter conveyed to another party all the interest I had in that matter. But circumstances have brought me in contact with these corporators, and I know that not only they but other persons did propose to invest in that enterprise. I am referring now particularly to the franchise for building a railroad from Virginia, through Ormsby and Washoe Counties, and I suppose the gentleman from Storey, (Mr. Collins), in his remarks just now, referred to the same thing. If gentlemen will inquire into that matter, they will find that what I have stated was the reason, and the sole reason offered by capitalists, men with abundance of capital, for not investing in that enterprise. Not for a single instant after they had thoroughly examined the route, and the plans and prospects of the road, did they entertain a doubt but that it would prove to be one of the most judicious investments of capital, but they objected to undertake the enterprise for the very reason—that they had not and could not have the exclusive privilege. They said the next session of the Legislature might grant the same privilege to some other company running over a portion, if not entirely the same route, and that consideration rendered the franchise comparatively valueless, when otherwise it would have been one of the most valuable corporate rights ever granted by a Legislature, both to the corporators themselves and to the public at large. That is the only reason why this enterprise has not been entered upon, and why, up to this time, this road has not been built or commenced.

Now, whilst I am in favor of trammelling the Legislature to the utmost possible degree of propriety in this matter of special legislation, yet, I say, let us not go beyond a practical point; and when we reach that point, let us there rest. When we see, as I think we can in this matter of the power of special legislation, that there are evils growing out of our proposed restrictions much greater than any benefits which can possibly be secured by them, then we ought to refrain from making any such restrictions.

Mr. BANKS. I wish to say a few words in reply to the arguments of the gentleman from Ormsby. He has called up imaginary objections and difficulties supposed to have arisen in California. Now, it is better, in my opinion, to look to history, than to devote our attention altogether to the future, calling up imaginary cases, that may, and may not, arise. In the State of California, a few years ago, under the influence of a number of Executive vetoes, men who desired to invest in works of this kind began to do so under the general laws of the State, which were eminently wholesome and proper; but more recently, it seems, they came to the conclusion that the provision on the subject of special legislation in the amended Constitution of that State did not require such laws, or at least, did not prohibit the granting of special franchises. Under these general laws, the most expensive, the most desirable of public works of this kind, have been carried on and completed. But since the system of special legislation has been adopted, the Legislature of California has been surrounded by a set of vampyres, whose business it has been to rob by statute, and steal by law. These men have systematically filched from the Legislature valuable franchises, and have demanded from capitalists extortionate prices for procuring them. In that way, many beneficial enterprises have been defeated. I have known an instance where a franchise of considerable magnitude was pending, in which not less than $10,000 were expended for whiskey bills, and matters of that character alone, to say nothing of other things, about which the public knew nothing.

Now I contend that there are no difficulties about toll-bridges, such as the gentleman from Ormsby has suggested. We have no large streams in this State where heavy expenditures of capital are required in the construction of bridges. In California, where such streams exist, it has been found not at all difficult to enact such laws as to authorize the counties on the two sides of a stream proposed to be bridged, to regulate the matter satisfactorily. Neither has there been found in California any difficulty in enacting laws covering the whole case of roads extending through two or more

election. The experience of California, in a word, demonstrates this, that while a system of general legislation was enforced there, in the matter of toll-road and ferriage franchises, satisfaction was given to all parties—to the franchise-seeker, to the capitalist, and to the public—while, under the more recent system of granting franchises, under the new interpretation of the Constitution by the Legislature, there has grown up a system of lobby influence which is most disgraceful to the State, and which, I hope and trust, never will be suffered to grow up in the State of Nevada.

Mr. HOVEY. I move to amend by inserting the words "and other," between the word "street," and the word "railroad," so that the amendment will read: "The granting of franchises for the construction of toll-roads, toll-bridges, and street and other railroads."

The question was taken, and the amendment to the amendment was not agreed to.

Mr. FITCH. I am opposed to this amendment offered by the gentleman from Humboldt, but I want to have it as perfect as possible, in case it should pass, and I therefore move to amend by inserting the word "canals."

The question was taken, and the amendment was not agreed to.

The question was taken on the amendment offered by Mr. Banks, and upon a division, it was not agreed to—ayes, 11; noes, 12.

COMPENSATION OF COUNTY OFFICERS.

The question recurred on the adoption of the original section.

Mr. FRIZELL. I move to amend the section, by striking out after the words "county and township officers," the words, "and their compensation;" also, by striking out the words, "in relation to fees and salaries."

The SECRETARY read the section as it would stand with the proposed amendment.

Mr. FRIZELL. Now, Mr. Chairman, and gentlemen of the Committee, my motives in offering this amendment are these: I do not think that any law can be made which will bear uniformly in regard to the fees and salaries of officers in this proposed State. I do not think that any general law can reach that subject fairly, if a general law can be made to reach it at all. I have no sinister motive in proposing this amendment, but I think the subject is sufficiently regulated in Section 21, which follows, where it is made obligatory on the Legislature to make all laws uniform and general in their operation, in all cases where general laws can be made applicable. But, conscientiously speaking, I do not see that any general law can operate uniformly and correctly in this matter of the compensation of officers, and therefore I proposed to strike out those words. Then if the Legislature find that such a law can be made to work uniformly, just as well, of course, under Section 21, it is obligatory on the Legislature to pass such a law.

The question was taken, and the amendment was agreed to.

INTEREST ON MONEY.

Mr. JOHNSON. There is another matter here to which I desire to call attention, and that is in relation to the interest on money. I do not think that subject ever had any proper place in this instrument. I will, therefore, submit an amendment to strike out the words "in relation to the interest on money." It is not likely that the Legislature ever would pass a special law upon this matter of interest on money; but this section appears to have been copied from the Constitution of Kansas, and, possibly, it was found also in the Constitution of Indiana. It seems that it was at the solicitation of one member of the committee to whom the matter was entrusted that this language was retained; but, inasmuch as it is not probable that the Legislature would ever pass any special act in relation to a subject of that kind, I deem it to be entirely out of place, and therefore, hope it will be stricken out.

The question was taken, and the amendment was agreed to.

Mr. McCLINTOCK. I propose to amend this section further, by striking out the words, "providing for their compensation," in the clause relating to petit jurors.

The question was taken, and the amendment was not agreed to.

No further amendment being offered, the section, as amended, was adopted.

Section 21 was read, as follows:—

SEC. 21. In all cases enumerated in the preceding sections, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

No amendment being offered, the section was adopted.

Section 22 was read, as follows:—

SEC. 22. Provision may be made by general law for bringing suit against the State as to all liabilities originating after the adoption of this Constitution.

No amendment being offered, the section was adopted.

Section 23 was read, as follows:—

SEC. 23. The enacting clause of every law shall be as follows: "The people of the State of Nevada, represented in Senate and Assembly, do enact as follows:"—and no law shall be enacted except by bill.

No amendment being offered, the section was adopted.

Section 24 was read, as follows:—

SEC. 24. No lottery shall be authorized by the State, nor shall the sale of lottery tickets be allowed.

No amendment being offered, the section was adopted.

Section 25 was read, as follows:—

SEC. 25. The Legislature shall establish a system of county and township government, which shall be uniform throughout the State.

No amendment being offered, the section was adopted.

Section 26 was read, as follows:—

Sec. 26. The Legislature shall provide for the election of a Board of County Commissioners, in each county, and these County Commissioners shall jointly and individually perform such duties as may be prescribed by law.

No amendment being offered, the section was adopted.

QUALIFICATIONS OF JURORS.

Section 27 was read, as follows:—

Sec. 27. Laws may be made to exclude from serving as jurors all persons not qualified electors of this State, and all persons who shall have been convicted of bribery, perjury, forgery, larceny, or other high crimes, misdemeanors, or malpractices; and laws shall be passed providing examination, and prohibiting, under adequate penalties, all undue influences thereon, from power, bribery, favor, or other improper practice.

Mr. PROCTOR. I move to amend Section 27 by striking out the words, "all persons not qualified electors of this State, and." My reason is simply this; that perhaps it would be quite a very difficult matter to get twelve men, or twenty-four men, rather, to serve on a jury, who have paid a poll-tax, and a man may purposely refuse to pay the poll-tax, in order to avoid of jury duty.

Mr. JOHNSON. The gentleman will recollect that it is within the power of the Legislature to adopt such an enactment or not, as it pleases, and it can also make the non-payment of a poll-tax a ground of exemption or not. Now, I would prefer that laws should be made to exclude from jury duty all except qualified electors, so as to prevent the picking up of jurors for a particular occasion, or a particular action, who have been, perhaps, but a short time in the Territory. I think the section had better stand as it is.

The question was taken, and the amendment was not agreed to.

Mr. PITCH. I move to amend the section by striking out the words, "bribery, perjury, forgery, larceny, or other high crimes," and inserting, in lieu thereof, the word "felony."

The question was taken, and the amendment was not agreed to.

Mr. STUBTEVANT. I move to amend by striking out the word "may," and inserting the word "shall" in the first line. My reason is this: I think it is a very important section, and I do not like to have it left optional with the Legislature whether such laws shall be made or not. I think it is very essential that those laws should be made.

The question was taken, and on a division the amendment was agreed to—ayes, 11; noes not counted.

No further amendment being offered, the section, as amended, was adopted.

Section 28 was read, as follows:—

Sec. 28. No money shall be drawn from the State treasury as salary or compensation to any officer or employe of the Legislature, or either branch thereof, except in cases where such salary or compensation has been fixed by a law in force prior to the election or appointment of such officer or employe; and the salary or compensation so fixed shall neither be increased nor diminished so as to apply to any officer or employe of the Legislature, or either branch thereof, at such session; *provided*, that this restriction shall not apply to the first special and regular sessions of the Legislature.

No amendment being offered, the section was adopted.

Section 29 was read, as follows:—

Sec. 29. The first regular session of the Legislature under this Constitution may extend to ninety days; but no subsequent regular session shall exceed sixty days, nor any special session convened by the Governor exceed twenty days.

No amendment being offered, the section was adopted.

THE HOMESTEAD.

Section 30 was read, as follows:—

Sec. 30. A homestead not exceeding one hundred and sixty acres of land, outside of the limits of a town or city, or not exceeding one acre within the limits of any town or city, occupied as a residence by the family of the owner, together with all the improvements on the same, of the aggregate value of five thousand dollars, shall be exempt from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon; *provided*, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife; and laws shall be enacted providing for the recording of such homestead within the county in which the same may be situated.

Mr. KENNDEY. I move to amend this section by striking out after the word "homestead," in the first line, to and including the words "five thousand dollars;" and inserting in lieu thereof the words "as provided by law." I will state briefly my reason for this amendment. I do not think that we ought, in this Constitution, to fix the amount or value of this homestead to be exempted. At some time it may happen that five thousand dollars would be an excessive amount, and at others it may be too small. I think the amount is properly something for the Legislature to fix upon, and I am therefore in favor of leaving it for the Legislature.

The question was taken, and, on a division, the amendment was agreed to—ayes, 17; noes, 6.

Mr. JOHNSON. I give notice that at the proper time, in the Convention, I will move to re-incorporate the words which have been stricken out.

Mr. BANKS. I had risen with the intention of giving the same notice.

No further amendment being offered, the section, as amended, was adopted.

SEPARATE PROPERTY OF THE WIFE.

Section 31 was read, as follows:—

Sec. 31. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

Mr. STURTEVANT. I move to strike out the entire section.

Mr. JOHNSON. I would like to hear the reason for that motion.

Mr. STURTEVANT (in his seat). I do not like he-women. [Laughter.]

The question was taken, and the amendment was not agreed to.

No other amendment being offered, the section was adopted.

SOLE TRADERS.

Section 31 was read, as follows:—

SEC. 31. No law shall be passed authorizing married women to carry on business as sole traders.

Mr. FITCH. I move to strike out that section.

Mr. WETHERILL. I hope the section will not be stricken out. We have seen the evils of the system of "sole traders" in California, in divers instances. It has led to abuses throughout the State. Dishonesty is practiced under it in every shape, and I hope the section will be retained.

Mr. FRIZELL. I hope, too, that section will not be stricken out. In striking out that section you benefit no class of men or women save one, and that is the proprietors of newspapers; for every newspaper will be likely to have about twenty advertisements a day, of women who are going to set up for themselves as sole traders.

Mr. BROSNAN. I hope the Convention will not strike out that section. I recollect that in the last Convention there was a great deal of discussion on this subject. It occupied much of the time of that Convention, and although this Convention is not, of course, bound by the action of that, yet some consideration is due to the investigation and the consideration which was given to this important section by that body. As has been remarked by the gentleman from Esmeralda, (Mr. Wetherill,) this business of sole trading has been a fruitful source of fraud and litigation in California; in fact it became at one time a by-word and reproach in that State. Cases were tried in the Courts of that State, in which it appeared that the most unbecoming occupations were pursued, or said to have been pursued by the female branch of the domestic circle—classes of business, sir, that female modesty would blush at, but which, nevertheless, were carried on, or said to be carried on, by wives, as sole traders, although in reality merely for the purpose, as was frequently found there by juries, of covering up the indebtedness, or the property, rather, of the head of the family, so that he might avoid the payment of his honest debts. For instance, wives have been known to carry on, ostensibly, the farming business, and the farm and the implements of agriculture, the horses, the cows, and everything of that description pertaining to the farm, was said to be owned and managed by the wife, whilst she was still living under the roof of the husband, owning property to the amount of thousands of dollars, while, at the same time, some laboring man who had perhaps a few hundred dollars due him for work done for the husband, was unable to obtain his pay.

Mr. STURTEVANT. I rise to a point of order. The gentleman is charging these things upon the farmers; now, in my opinion, farmers do not do such things; they are done more in the big cities. [Laughter.]

The CHAIRMAN. The point of order is not well taken.

Mr. BROSNAN. I was stating that such cases had been before the courts in California, where the heads of families have been sued for indebtedness due from them to their employes, and have set up as a defense, in order to escape from that indebtedness, that the property all belonged to their wives. Cases of that kind have not been infrequent, and it was with the knowledge of these things, of the great abuses and evils which might possibly arise from allowing a man to carry on business under the cloak of the wife's doing business in her own name—the possibility, I say, that under such a system great wrongs might be perpetrated, and honest creditors defrauded by debtors—that I was in favor, in the other Convention, of inserting that section in the Constitution. I have seen nothing since then calculated to change my views. It is equally as necessary now as it was then, and I hope the section will be retained in the Constitution which we are going to adopt.

Mr. CHAPIN. The gentleman has alluded to the passage of this section in the last Convention. It did so pass, but it was by a large majority only, and I have heard the most bitter complaints about that provision in that Constitution since that time. I am more firmly convinced now than I was then, of the importance of having it stricken out. Most of us are aware that many wives in this Territory are now suffering from having miserable, intemperate husbands who are incapable of transacting business, and those wives only get a living by carrying on business for themselves.

Mr. FRIZELL (in his seat.) Well, let them get a divorce.

Mr. CHAPIN. They are doing that to a liberal extent here now. [Laughter.] And now I propose to strike out this provision, and let them, if they will, go into some honorable, honest business, and get a living by it. I hope the section will be stricken out.

The question was taken on the motion to amend, by striking out the section, and, upon a division, it was not agreed to—ayes, 11; noes, 14.

Mr. FITCH. I give notice that I shall renew the motion when the question comes up in the Convention.

No other amendment being offered, the motion was adopted, upon a division—ayes, 13; noes, 10.

COUNTY OFFICERS.

Section 33 was read, as follows:—

Sec. 33. The Legislature shall provide for the election by the people of a Clerk of the Supreme Court, County Clerks, County Recorders, who shall be ex-officio County Auditors, District Attorneys, Sheriffs, County Surveyors, Public Administrators, and other necessary officers, and fix by law their duties and compensation; provided, That in no case such compensation shall exceed in the aggregate, as salary and fees in office, the sum of four thousand dollars per annum, to any one of such officers, exclusive of the necessary expenses allowed upon the discharge of the duties of the office, except the Sheriff's, whose compensation as fees and salary shall in no case exceed the sum of six thousand dollars per annum, exclusive of expenses necessarily incurred in the discharge of the duties of said office. County Clerks shall be ex-officio Clerks of the Courts of Record in and for their respective counties.

Mr. FITCH. I move to amend the section by striking out, after the word "compensation," the proviso down to and including the words, "duties of said office," so that the section, if amended as I propose, would read thus:—

Sec. 33. The Legislature shall provide for the election by the people of a Clerk of the Supreme Court, County Clerks, County Recorders, who shall be ex-officio County Auditors, District Attorneys, Sheriffs, County Surveyors, Public Administrators, and other necessary officers, and fix by law their duties and compensation. County Clerks shall be ex-officio Clerks of the Courts of Record in and for their respective counties.

My reasons for proposing this amendment are briefly these: I wish to leave the fixing of all salaries, especially those of local and county officers, to the Legislature, and I do not desire to have those salaries defined and fixed in the Constitution. That was one of the main objections to the old Constitution when it was submitted to the people, and the same objection will, of course, be urged against the new one if we retain such a proviso. I regard it is as bad policy to fix, in the fundamental law of the State, the amount of salaries, which, by the operation of changes in the currency, or on account of some increase or decrease of values, may, in a very short time, be practically greatly reduced or increased. Perhaps the salary of the County Clerk, fixed now at four thousand dollars as a maximum, may be entirely correct and sufficient at the present time, but the national currency may hereafter be adopted, and a large increase of values result; in such a case, four thousand dollars would be an insignificant and paltry sum. For that reason I am opposed to putting that or any other specific sum in the fundamental law of the State. I think it is exclusively within the province of the Legislature, and altogether out of place here.

Mr. EARL. I agree fully with the gentleman in the opinion that, in the event of our having a paper currency, the amount here established will not be sufficient, especially in some of the counties; indeed, I know it will not be sufficient. I also concur in the objection that it is improper to specify the amount of any salary in our fundamental law.

Mr. JOHNSON. If we could do it—if it were practicable, as it seemed to be at the time this Constitution was framed in the former Convention, to make a maximum for the salaries of all these officers—I should, for one, like to adopt that course. But I tell you, Mr. Chairman, that I have learned one thing since that time, and that is, that these county officers wield a very potent influence, and I am not willing to incorporate in this Constitution the elements of its own destruction. I am willing to leave this whole question of salaries and fees to the Legislature, rather than incorporate such a provision here, because I do not desire to provoke any opposition which can be avoided.

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

COMPENSATION OF THE LEGISLATURE.

Section 34 was read, as follows:—

Sec. 34. The members of the Legislature shall receive as compensation for services, the sum of eight dollars for each day's actual attendance upon their legislative duties, at any regular or special session, and thirty cents for each mile traveled by the usual route in going to and returning from the place of meeting of the Legislature, and no further compensation or allowance shall be made to any member of the Legislature for the performance of his official duties; provided, that an appropriation may be made for the payment of such actual expenses as members of the Legislature may incur for postage, express charges, newspapers and stationery, not exceeding the sum of forty dollars, for any general or special session, to each member; and *furthermore provided*, that the Speaker of the Assembly, and Lieutenant Governor, as President of the Senate, shall each, during the time of their actual attendance as such presiding officers, receive an additional allowance of two dollars per diem.

Mr. KENNEDY. I have an amendment here which I desire to offer. It is a copy of the provision contained in the California Constitution on this subject, and I move its adoption as a substitute for the section.

The SECRETARY read as follows:—

Sec. 34. The members of the Legislature shall receive for their services a compensation to be fixed by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the members of either House shall have been elected.

Mr. FITCH. I suggest that there should be an amendment to provide for the compensation of the first Legislature.

Mr. WARWICK. I will move to amend, by allowing the members of the first Legislature eight dollars per day, and thirty cents for each mile of travel.

Mr. KENNEDY. That can be done in the Schedule.

Mr. WARWICK. There is a suggestion on my left that it can be altered in the Schedule, and therefore I will withdraw my amendment.

Mr. JOHNSON. I am opposed to the substitute. So far as the provision is made applicable to members of the first Legislature, I am not particular about it; but, Mr. Chairman, I

ate extremely in favor of the proviso contained in this section, to wit:—

Provided that an appropriation may be made for the pay-ment of such actual expenses as members of the Legislature may incur for postage, express charges, newspapers, and stationery, not exceeding the sum of forty dollars for any general or special session for each member.

You may fix the amount at forty, sixty, or one hundred dollars, if you please; but you and I know, that a great proportion of the items which go to make up the sum of legislative expenses, consist of these apparently trifling matters. My observation has shown me that these small items amount in the aggregate to an enormous sum, and I propose, by this provision, to make every member responsible for whatever of expense for stationery, papers, etc., he incurs—to provide such guards and restrictions as will prevent members of the Legislature from being quartered on the Treasury, so far as to compel the State to pay not only for what they use, but also for what they may choose to carry away, or waste and destroy. I care not what amount may be fixed upon, but, at all events, let us designate some amount, so as to make each member the guardian and custodian of the public revenue, and, if you do that, you will avoid what I know has been a crying evil in the State of California—more particularly so there, perhaps, than here.

As to the salaries of members, I am quite satisfied to leave that matter to the Legislature, after we shall have fixed the salaries for the first session. In that respect, I do not think it is necessary to have such a guarded restriction.

Mr. WARWICK. I move to amend the amendment by striking out "eight," and inserting "ten."

Mr. KENNEDY. I am inclined to accede to the views of the gentleman from Ormsby, (Mr. Johnson,) who has had more experience in these legislative matters than I have; but I think the sum named here is entirely too small, and will suggest that it be amended, so as to make the amount named in the proviso eighty, instead of forty dollars.

Mr. JOHNSON. I suggest that we pass over the section temporarily. I think we can harmonize our views, and readily agree upon the amount to be allowed.

No objection being made, the section was passed over temporarily.

ELECTIONS OF UNITED STATES SENATORS.

Section 35 was read, as follows:—

SEC. 35. In all elections for United States Senators, such elections shall be held in joint convention of both Houses of the Legislature. It shall be the duty of the Legislature which convenes next preceding the expiration of the term of such Senator, to elect his successor. If a vacancy in such Senatorial representation from any cause occurs, it shall be the duty of the Legislature then in session, or at the succeeding session thereof, to supply such vacancy. If the Legislature shall at any time, as herein provided, fail to unite in a joint convention within twenty days after the commencement of the session of the Legislature, for the election of such Senator, it shall be the duty of the Governor, by proclamation, to convene the two Houses of the Legislature in joint convention, within not less than ten days nor exceeding ten days from the publication of his proclamation, and the joint convention, when so convened, shall proceed to elect the Senator, as herein provided.

Mr. BANKS. I wish to offer a slight verbal amendment here, although it is not a matter of great importance. It says: "If a vacancy in such Senatorial representation from any cause occurs." I think the word should be "occur," using the subjunctive form. I move to amend by striking out the letter "s" from the word "occurs."

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

PAY OF THE LEGISLATURE—AGAIN.

The consideration of Section 34 was resumed.

Mr. FITCH offered the following, which Mr. Kennedy accepted, in lieu of the substitute which he had offered:—

SEC. 34. The members of the Legislature shall receive for their services a compensation, to be fixed by law, and paid out of the public treasury, but no increase of compensation shall take effect during the term for which the members of either House shall have been elected; provided, that an appropriation may be made for the payment of such actual expenses as members of the Legislature may incur for postage, express charges, newspapers, and stationery, not exceeding the sum of eighty dollars for any general or special session to each member.

Mr. LOCKWOOD. I see that there is no provision here for the additional compensation of the Lieutenant-Governor and Speaker.

The CHAIRMAN. The substitute will have to be amended in that respect, perhaps.

Mr. FITCH. I think the Legislature may be allowed to fix the compensation of the Lieutenant-Governor and Speaker. They can place it higher than that of the other members, if they choose.

The question was taken on the adoption of the substitute, and it was agreed to.

Mr. CROSMAN. Now, I move to amend the substitute, by striking out the word "eighty," and inserting the word "fifty."

Mr. FITCH. I would suggest that this is not only the allowance for postage, but for newspapers, and stationery, also. A large amount of stationery must be used, and as greenbacks may be adopted as the currency, it seems to me that fifty dollars would be too small an allowance for a three months' session.

Mr. CROSMAN. It is proposed that the first session only shall continue for three months, and that is provided for elsewhere. After the first session the time is to be materially shortened, being fixed at sixty days, I believe. Besides, we do not expect greenbacks to remain at their present rates a great while. We can fix the amount to be allowed for the first session, in the Schedule.

Mr. FITCH. If we place the amount at eighty dollars, we do not necessarily thereby compel members to use the whole

Mr. CROSMAN. I would ask the gentleman if he knows a case of a limitation of that kind, where the limit was not reached. I have answered it repeatedly.

Mr. FITCH. I will state, in answer to the gentleman's inquiry, that I know of three or four members of a recent California Legislature, who went away and left a hundred dollars worth of stationery, which they might have appropriated as well as not, if they had seen fit to do so.

Mr. JOHNSON. I will state, on the other hand, that I have known of some who sent away wagon full of stationery.

Mr. KENNEDY. Gentlemen should inquire what it costs for newspapers, and for letter postage, as well as for all the stationery used. I do not think that the sum mentioned will pay the whole cost of these things, and I know, that for my own part, I use more than that amount.

Mr. CROSMAN. This amendment is to apply, as I understand, to the State Legislature only when the State Government shall be in working order, which will probably be about ten years hence. The Schedule will be likely to fix the per diem and expenses of the first Legislature, if we do not do so in the body of the Constitution. It may be, that greenbacks are not worth now more than fifty cents on the dollar, but two years from now, when the Constitution will be fairly in operation, I calculate that fifty dollars in greenbacks will be fifty dollars.

The question was taken on the amendment offered by Mr. Crosman, and it was not agreed to.

Mr. CHAPIN. I move to amend, by striking out "eighty," and inserting "sixty."

The question was taken, and, upon a division, the amendment was agreed to—ayes, 13; noes, [illegible].

No further amendment being offered, the section, as amended, was adopted.

THE VETO POWER.

Section 36 was read, as follows:—

SEC. 36. Every bill which may have passed the Legislature, shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter such objections upon the journal, and proceed to reconsider it. If, after such reconsideration, it again pass both Houses by ayes and noes, by a majority of two-thirds of the members elected to each House, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within five days after it shall have been presented to him, (Sunday excepted,) the same shall be a law, in like manner as if he had signed it, unless the Legislature, by its final adjournment, prevent such return, in which case it shall be a law, unless the Governor, within ten days after the adjournment, (Sunday excepted,) shall file such bill, with his objections, in the office of the Secretary of State, who shall lay the same before the Legislature at its next session, in like manner as if it had been returned by the Governor; and if the same shall receive the vote of two-thirds of the members elected to each branch of the Legislature, upon a vote taken by ayes and noes, to be entered upon the journals of each House, it shall become a law.

Mr. JOHNSON. I suggest a verbal alteration in this section. Where the word "Sunday" occurs a second time, the plural form should be used—"Sundays."

The CHAIRMAN. It is a verbal error only; the Secretary will make the correction.

No further amendment being proposed, the section was adopted.

EXECUTIVE DEPARTMENT.

The Committee of the Whole next took up for consideration Article V, entitled Executive Department.

Section 1 was read, as follows:—

SECTION 1. The supreme executive power of this State, shall be vested in a Chief Magistrate, who shall be Governor of the State of Nevada.

No amendment being offered, the section was adopted.

GOVERNOR'S TERM OF OFFICE.

Section 2 was read, as follows:—

SEC. 2. The Governor shall be elected by the qualified electors at the time and places of voting for members of the Legislature, and shall hold his office for two years from the time of his installation, and until his successor shall be qualified.

Mr. DUNNE. I move to amend by striking out the word "two," and inserting the word "four," so as to read—"shall hold his office for four years from the time of his installation, and until his successor shall be qualified."

The question was taken, and upon a division, the amendment was agreed to—ayes, 16; noes, not counted.

No further amendment being offered, the section, as amended, was adopted.

ELIGIBILITY OF GOVERNOR.

Section 3 was read, as follows:—

SEC. 3. No person shall be eligible to the office of Governor, who is not a qualified elector, and who, at the time of such election, has not attained the age of twenty-five years; and who, except at the first election under this Constitution, shall not have been a citizen resident of this State for two years next preceding the election.

Mr. EARL. I wish to offer an amendment; to insert in the second line, after the word "elector," the words, "who has served one term," so as to read:—

"No person shall be eligible to the office of Governor, who is not a qualified elector, who has served one term, and who, at the time of such election," &c.

My idea is, that after a person has served four years, he should not be eligible until he passes over one term.

The question was taken, and the amendment was not agreed to.

No further amendment being offered, the section was adopted.

ELECTION RETURNS.

Section 4 was read, as follows:—

SEC. 4. The returns of every election for Governor, and other State officers voted for at the general election, shall be sealed up and transmitted to the seat of Government, directed to the Secretary of State, and on the third Monday of December succeeding such elec-

ator, the Chief Justice of the Supreme Court and the Secretary of State shall meet at the office of the Secretary of State, and open and canvass the election returns for Governor and all other State officers, and forthwith declare the result, and publish the names of the canvassers present. The persons having the highest number of votes for the respective offices shall be declared elected, but in case any two or more have an equal, and the highest number of votes for the same office, the Legislature shall, by joint vote of both Houses, elect one of said persons to fill said office.

Mr. McCLINTON. I move to strike out this section, for the reason that we can provide for all that in the Schedule.

The question was taken, and the amendment was not agreed to.

No further amendment being offered, the section was adopted.

Section 5 was read, as follows:—

SEC. 5. The Governor shall be Commander-in-Chief of the military forces of this State, except when they shall be called into the service of the United States.

No amendment being offered, the section was adopted.

Section 6 was read, as follows:—

SEC. 6. He shall transact all executive business with the officers of the Government, civil and military, and may require information, in writing, from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

No amendment being offered, the section was adopted.

Section 7 was read, as follows:—

SEC. 7. He shall see that the laws are faithfully executed.

No amendment being offered, the section was adopted.

VACANCIES IN OFFICE.

Section 8 was read, as follows:—

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission, which shall expire at the next election and qualification of such officer.

Mr. DUNN. That section seems to require some amendment. I do not know exactly what it should be, but there should be some change in the concluding lines—"which [commission] shall expire at the next election and qualification of such officer." That seems to apply to the next incumbent.

Mr. NOURSE. I will move to amend the section in that particular by striking out the words "such officers" and inserting in lieu thereof the words "the person elected to such office," so as to read, "which shall expire at the next election and qualification of the person elected to such office."

The question was taken, and the amendment was agreed to.

Mr. FRIZELL. I do not think that all offices which it is in the power of the Governor to fill by appointment are filled by issuing a commission. The language of this section is to the effect that the Governor shall issue a commission, and it occurs to me that it would read better if we should strike out the words "by granting a commission," and insert the words "by appointment." I will move that as an amendment. This is a question, I confess, as to the facts of which I am not very well posted; nevertheless, it occurs to me that many offices are filled by the Governor for which it is not necessary for him to issue a commission.

Mr. BANKS. The real object is to require the Governor to appoint by giving a commission, and whoever receives such commission takes it as he would a certificate of election to the body appointed to receive it, and upon that he takes his seat, or enters upon the duties of his office, as the case may be. It is merely providing what shall be the evidence of appointment.

The question was taken, and the amendment was not agreed to.

Mr. JOHNSON. There is one matter in this connection to which I desire to call attention. When this section was adopted by the former Convention, in the language which is used in the printed copy, the Convention proceeded on the theory that no provision was to be made by law for appointment to office by the Governor, except to supply vacancies. If it is the sense of the Committee that it is proper to invest the Governor, in any case, with the power of original appointment, then it occurs to me that something more is necessary to be added here. If, however, this Convention agrees with the preceding one in withholding from the Governor the power of appointing to office, except in cases of vacancies, then it will not be necessary to make any change. If the Convention do not agree in that particular with the former Convention, then I suggest that we insert, after "next election," the words "or appointment." That, it seems to me, would be necessary if you give the Governor original appointing power. I do not make a motion, but simply suggest the matter to the Committee.

No further amendment being offered, the section, as amended, was adopted.

Section 9 was read, as follows:—

SEC. 9. The Governor may, on extraordinary occasions, convene the Legislature, by a proclamation, and shall state to both Houses, when organized, the purpose for which they have been convened, and the Legislature shall transact no legislative business except that for which they were specially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in session.

No amendment being offered, the section was adopted.

Section 10 was read, as follows:—

SEC. 10. He shall communicate, by message, to the Legislature, at every regular session, the condition of the State, and recommend such measures as he may deem expedient.

No amendment being offered, the section was adopted.

Section 11 was read, as follows:—

SEC. 11. In case of a disagreement between the two Houses, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; provided, it be not beyond the time fixed for the meeting of the next Legislature.

...endment being offered, the section was ...opted.

Section 12 was read, as follows:—

...c. 12. No person shall, while holding any office ...the United States Government, hold the office of ...ernor, except as herein expressly provided.

...endment being offered, the section was ...opted.

PARDONING POWER.

Section 13 was read, as follows:—

...c. 13. The Governor shall have the power to sus... the execution of fines and forfeitures, and to ...t reprieves for a period not exceeding sixty days, ...from the time of conviction, for all offenses, ex... in cases of impeachment. Upon conviction for ..., he shall have power to suspend the execution of ...ntence until the same shall be reported to the Legis... at its next meeting, when the Legislature shall ...r pardon, direct the execution of the sentence, or ...t a further respite. And if the Legislature ...ld fail or refuse to make final disposition of such ..., the sentence shall then be enforced at such time ...d place as the Governor, by his order, may direct. The ...ernor shall communicate to the Legislature, at the ...ning of every session, every case of fine or forfeit... remitted, or reprieve, pardon, or commutation ...ted, stating the name of the convict, the crime of ...ch he was convicted, the sentence, its date, and the ...ns of the remission, commutation, pardon or re...ve.

Mr. BROSNAN. I move to amend this section by striking out the words, "to suspend the collection of fines and forfeitures." I do not like to give that power to any single man.

Mr. JOHNSON. I think it will not be found that this section invests the Executive with that extraordinary power. It will be seen by a close examination of the section, that it does not propose to invest the Executive with the power of pardoning at all, but he is to constitute one of a board which is invested with that power. Now, the object of this and the succeeding sections, and the extent to which they go, is merely this—that until such time as the Pardoning Board can meet to consider any given case, it shall be within the power of the Executive to suspend the enforcement of sentence—"to suspend the collection of fines and forfeitures, and to grant reprieves, for a period not exceeding sixty days." Then, after such suspension, the pardoning power is lodged in this Pardoning Board. I had the honor of submitting this section to the former Convention, and I then conceived it quite improper that the Executive should have the extraordinary power of absolutely pardoning any one, and for the strong reason that the responsibility should not rest upon one man alone. This portion of the section only operates to confer a power of suspension until such time as the Pardoning Board can pass upon the case, and I think the gentleman from Storey, (Mr. Brosnan,) will see the propriety of that provision.

Mr. NOURSE. Was it intended that the sixty days limitation should apply also to the matter of fines and forfeitures?

Mr. JOHNSON. I think the language can bear no other construction.

Mr. NOURSE. Then I think the word "to" should be stricken out where it occurs before the word "grant," so as to read, "and grant reprieves," etc.

Mr. BROSNAN. Upon examination of the section, I see that the gentleman from Ormsby is right—that the power here granted is merely to postpone sentence. I, therefore, withdraw my amendment. But I am not satisfied with the section yet. It says:—

"The Governor shall communicate to the Legislature, at the beginning of every session, every case of fine or forfeiture remitted, or reprieve, pardon or commutation granted."

Now, if a forfeiture is remitted, it is blotted out forever. If these things are to be done by the Governor, there is no use, it seems to me, in applying to any ultimate power, stating the name of the offender, the character of the offense, and what is to be, or has been done, in regard to such offense.

Mr. HOVEY. I would suggest that the gentleman refer to the next section, by which the Pardoning Board is to be established.

Mr. BROSNAN. Well, the language here is, nevertheless, inappropriate. For, I hold that the word "remit," implies to blot out entirely. It says "the Governor shall communicate every case of fine or forfeiture *remitted*," etc.

The CHAIRMAN. The Chair begs leave to suggest that the pardoning power is exercised by the board, and the Governor is merely required to report their action to the Legislature.

Mr. JOHNSON. That is it, exactly. And I think the recollection of the gentleman from Storey, (Mr. Brosnan,) will serve him in that particular. We thought, in the last Convention, that the Governor would be the proper person upon whom to devolve the duty of reporting to the Legislature the official action of the Board of Pardons, of which he is *ex-officio* a member.

Mr. NOURSE. I think a careful examination of the first few lines of the section will show that, as it at present stands, the power of the Governor is unlimited, for the suspension of fines and forfeitures, at all events. In order to make sure of this matter, I suggest that we strike out the word "to," after "forfeitures, and."

Mr. BANKS. I hope that will be done, and that we shall also strike out the comma after the word "forfeitures," also.

Mr. NOURSE. No; I think that is not necessary; the meaning is plain, if we take out the word "to." I move to strike out the word "to."

The question was taken on Mr. Nourse's amendment, and it was agreed to.

No further amendment being offered, the section was adopted.

Section 14 was read, as follows:—

SEC. 14. The Governor, Justices of the Supreme Court, and Attorney General, or a major part of them, of whom the Governor shall be one, may, upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments, and grant pardons after con-

violence, in all cases except treason and felony, provide by such regulations as may be provided by law, against the intrusion or opening the journals.

No amendment being offered, the section was adopted.

WHITE SEAL.

Section 15 was read, as follows:—

Sec. 15. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the "Great Seal of the State of Nevada."

Mr. NOURSE. I supposed that the practice was that the great seal of State should be kept by the Secretary of State. I will ask whether that is not the case?

Mr. BROSNAN. I think the custom is, that it is kept by the Governor, and I think the gentleman from Ormsby, (Mr. Johnson,) will tell you the same.

Mr. BANKS. I believe the Governor is supposed to keep it, but the Secretary of State really keeps it for him.

No amendment being offered, the section was adopted.

Section 16 was read, as follows:—

Sec. 16. All grants and commissions shall be in the name and by the authority of the State of Nevada, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

The CHAIRMAN. I suggest whether the word "by" should not be inserted there before the words "the authority."

Mr. NOURSE. Most certainly. I move to insert the word "by" between the word "and" and the word "the," so as to read "in the name and by the authority of the State of Nevada."

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

Section 17 was read, as follows:—

Sec. 17. A Lieutenant Governor shall be elected at the same time and place, and in the same manner as the Governor, and his term of office, and his eligibility, shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of the office, or be absent from the State, the President pro tempore of the Senate shall act as Governor, until the vacancy be filled or the disability cease.

No amendment being offered, the section was adopted.

Section 18 was read, as follows:—

Sec. 18. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor, for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, and at the head of any military force thereof, he shall continue Commander-in-Chief of the military forces of the State.

Mr. NOURSE. I would like to know how that compares with the former section, which provides that the Governor shall be Commander-in-Chief of the militia, except when called into the actual service of the United States? I suppose, however, as a State we shall have no war.

Mr. BANKS. We may have an insurrection in this State.

No amendment being offered, the section was adopted.

SURVEYOR GENERAL.

Section 19 was read, as follows:—

Sec. 19. A Secretary of State, a Treasurer, a Controller, and an Attorney General, shall be elected at the time and places, and in the same manner as the Governor. The term of office of each shall be the same as prescribed for the Governor. Any elector shall be eligible to either of said offices.

Mr. PROCTOR. I move to amend the section by inserting after the word "Controller" the words "a Surveyor General," so as to read "a Secretary of State, a Treasurer, a Controller, a Surveyor General, and an Attorney General, shall be elected," etc.

The question was taken, and the amendment was not agreed to.

Mr. DUNN. I move to amend the section by inserting after the word "Controller" the words "a Superintendent of Public Instruction."

Mr. BROSNAN. There is another section which provides for that.

Mr. DUNN. Very well; if that office is provided for I will withdraw the amendment.

No further amendment being offered, the section, as amended, was adopted.

SECRETARY OF STATE.

Section 20 was read, as follows:—

Sec. 20. The Secretary of State shall keep a true record of the official acts of the Legislative and Executive Departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature.

Mr. JOHNSON. I am not prepared, at the present moment, to say that this section is, or is not, exactly right, but it occurs to me that it is not. Would it be right to require the Secretary of State to keep a true record of the proceedings of the Legislature, when the records of the proceedings of that department are also required to be kept by the proper officers of the respective branches of the Legislature? He is made, or should be made, the custodian of the records of the Legislature, when prepared by the proper officers, as well as of the other departments. The language of the section can be amended hereafter, however, if necessary.

Mr. LOCKWOOD. I would like to inquire if the term of the State Treasurer and the other State officers is intended to be four years. I see it says they shall be elected at the time and place and in the same manner as the Governor.

The CHAIRMAN. The Chair thinks the term must be the same from the reading of the section. If there is any error, the Chair will entertain a motion to reconsider.

Mr. LOCKWOOD. I shall certainly oppose that in the Convention.

Mr. DUNN. I think their terms should be the same as that of the Governor; but as there is to be a reconsideration moved hereafter, in relation to the term of the Governor, I will not offer any amendment at this time.

No further amendment being offered to Section 20, the section was adopted.

Section 21 was read, as follows:—

"Sec. 21. The Governor, Secretary of State, and Attorney General, shall constitute a Board of State Prison Commissioners, which Board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall also constitute a Board of Examiners," with power to examine all claims against the State (except salaries or compensation of officers fixed by law,) and perform such other duties as may be prescribed by law.

Mr. BANKS. I move to amend this section by adding to it the following:—

"And no claims against the State, except salaries or compensation of officers fixed by law, shall be passed upon by the Legislature, without having been considered and acted upon by said Board of Examiners."

Mr. LOCKWOOD. I may be more obtuse than other gentlemen, but I really do not understand that amendment.

Mr. BANKS. It merely provides that no claims against the State shall be acted upon by the Legislature without first passing through the hands of the Board of Examiners. The Chairman will recollect that in California, having no constitutional provision on the subject, the Legislature passed a law, and agreed to be bound by it, of the same purport. It was a sort of tacit understanding, by which succeeding Legislatures required all claims presented to be first passed upon by the Board of Examiners. Under that understanding, so long as it was observed, they stood in California just where this provision would place the Legislature of the new State of Nevada; but, sometimes, ignoring that law, gentlemen would bring in claims, and have them acted upon in the Legislature, by means of lobby influence, in spite of the Board of Examiners. Now, I want the rule understood and firmly established, that all claims, except salaries fixed by law, shall first pass through the hands of the Board of Examiners before they can be obtruded in any way upon the Legislature.

The question was taken, and the amendment was agreed to.

Mr. COLLINS. I rise to make an inquiry. How is it provided here that—

"The Governor, Secretary of State and Attorney General shall constitute a Board of State Prison Commissioners, which board shall have such supervision of all matters connected with the State Prison as may be provided by law."

Now, I think, that at the time of the election under the old Constitution last year, a person was chosen as Attorney General who was a resident of Lander County, and I would inquire if the intention of this section is that the Attorney General shall be required to be a resident of the Capital of the State; and whether it would not be more proper to constitute some other of the State officers a member of that board? Would it not be better, for instance, that the Controller should be named, who, with the Secretary of State, would be at the Capital at all times, when required to consult with the Governor. It seems to me that would be better than to impose this duty upon a party who may reside at the remotest part of the State.

The CHAIRMAN. I would suggest that this objection could be removed by requiring all the State officers to reside and keep their offices at the Capital.

Mr. BROGNAN. That matter was discussed at the former Convention, and it was then thought that there was not salary enough attached to the office of Attorney General to justify such a requirement.

Mr. JOHNSON. It will be seen that the Attorney General is one of the State officers who are not required to reside at the Capital. As the gentleman from Storey, (Mr. Brogan), remarked, it was thought, in view of the limited amount of salary, and for other reasons, perhaps, that it was not advisable to require him to keep his office here, and I will state one special reason, which has not been adverted to, why it was thought best to designate him as one of the members of the State Prison Board, premising it with the suggestion that, for my own part, I do not think it absolutely necessary that either of the members of this Board should reside at the seat of Government. They will undoubtedly have stated times for their meetings. I know it is so in California, where they act under the operation of a law similar to this provision; and the Attorney General may be occupied in Washoe, in Storey, in Lyon, or in any other county, perhaps in some one of the more remote counties, so that it possibly may not be convenient for him to be a frequent attendant at the meetings of the Board. Yet, even if he were absent, there would still be a quorum for the transaction of business, and therefore I do not know that it is essential for him to attend upon all the sessions. Now, the reason why these other officers should not be placed upon the Board of State Prison Commissioners is this—that in such case, in the capacity of members of the Board of Examiners, they would be required to pass upon their own expenditures. For example, the Controller would have to issue, and the Treasurer would have to pay the warrants drawn by the Board of which, respectively, they are members; and it was deemed improper to constitute an officer a member of the Examining Board, whose duty it would thereupon be to pass upon his own accounts. The members of this Board of Examiners are not clothed with extraordinary powers as individuals, but they may, as a Board, refuse to pass upon claims brought before them; hence the Attorney General was mentioned as one of the officers to constitute this commission, and I think the reasons I have mentioned should influence the committee and induce it to retain him in that position.

No further amendment being offered, the section was adopted.

Section 33 was read, as follows:—

Sec. 33. The Secretary of State, State Treasurer, State Controller, Attorney General, and Superintendent of Public Instruction, shall perform such other duties as may be prescribed by law.

No amendment being offered, the section was adopted.

Mr. DUNN. I move that the committee rise, report progress, and ask leave to sit again.

Mr. O'DONNELL. No, no! Let us reconsider the passage of the articles we have gone through with.

Mr. DUNN. Very well; I will make that motion, then.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the Chair, The CHAIRMAN reported that the Committee of the Whole had had under consideration Articles III, IV, and V of the Constitution, and had made sundry amendments thereto, in which they had directed him to ask the concurrence of the Convention.

The report was accepted.

Mr. DUNN. I move that the rules be suspended, and that the articles just reported from the Committee of the Whole be ordered engrossed as amended, for a third reading.

The question was taken, and the motion was agreed to.

REFERENCE OF ARTICLES.

Mr. DUNN. As Article VI, entitled Judicial Department, has been referred to a committee, I will move that Articles VII, VIII, IX, X, and XI be taken up and committed to the Committee of the Whole.

The PRESIDENT. Has the Convention taken action upon referring the article on the Judiciary? I do not recollect such action; and if it was had, I think it must have been taken at some time when I was absent.

Mr. DUNN. If there be any question about that action, it had better, perhaps, be decided. I will withdraw my former motion, and move instead, that Article IV, entitled Judicial Department, be referred to the Committee on the Judiciary.

Mr. DeLONG. I move to amend the motion by referring, also, Article VII, entitled Impeachment and Removal from Office, to the same committee.

Mr. DUNN accepted the amendment.

The question was taken, and the motion, as modified, was agreed to.

On motion of Mr. DUNN, Article VIII, entitled Municipal and other Corporations; Article IX, entitled Finance and State Debt; Article X, entitled Taxation, and Article XI, entitled Salaries, were taken up, read a second time by title, and referred to the Committee of the Whole.

COMMITTEE OF THE WHOLE.

Mr. DeLONG. I now move that the Convention resolve itself into Committee of the Whole for the consideration of these articles.

The question was taken, and the motion was agreed to.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. DeLong in the Chair), and proceeded to the consideration of the matters referred to it.

MUNICIPAL AND OTHER CORPORATIONS.

Article VIII, entitled Municipal and other Corporations, was first considered.

Section 1 was read, as follows:—

SECTION 1. The Legislature shall pass no special act conferring corporate powers, except for municipal purposes; but corporations may be formed under general laws; and all such laws may, from time to time, be altered or repealed.

No amendment being offered, the section was adopted.

TAXATION OF CORPORATIONS.

Section 2 was read, as follows:—

SEC. 2. All real property and possessory rights to the same, as well as personal property in this State, belonging to corporations, now existing or hereafter created, shall be subject to taxation, the same as property of individuals; *provided*, that the property of corporations formed for commercial, charitable, religious, or educational purposes, may be exempted by law.

The CHAIRMAN. The Chair suggests an inquiry, whether this does not contain the celebrated mining-tax clause.

Mr. BANKS. I think not.

Mr. CHAPIN. I move that it be adopted.

Mr. DUNN. I wish to propose an amendment.

Mr. BANKS. All that this section provides if the Chair will allow me to make a suggestion, is just this. It provides that corporations, like individuals, shall be taxed on whatever property they own—that corporations having property, and A, B, and C, as private individuals, having property, that property shall all be taxed under the Constitution and laws of this State, the property of corporations being taxed just as though it were held by individuals.

Mr. NOURSE. That is all it does.

Mr. PROCTOR. But what does "possessory rights" include?

The CHAIRMAN. It includes anything that a man has possession of, or a legitimate right to hold and use.

Mr. DUNN. I move to amend the section by the insertion of these words, after the words "hereafter created"—"mines, and possessory claims thereto."

Mr. CHAPIN. That is provided for elsewhere.

Mr. NOURSE. This section simply provides, as the gentleman from Humboldt (Mr. Banks) has said, that corporations shall be taxed just as individuals are taxed. I suppose nobody objects to that.

Mr. DUNNE. Yes, sir; I object to the introduction of terms.

Mr. BOURNE. But it does not relate to the question of notice. It only provides that where an individual would have to be taxed, whether real estate or anything else, a corporation shall be taxed just the same. It only provides that all property subject to taxation shall be taxed on the same, if in the hands of corporations, as the same property would be taxed if in the hands of individuals.

Mr. DUNNE. I see the point the gentleman makes, and I withdraw my amendment.

No other amendment being offered, the section was adopted, as read, was adopted.

Section 5 was read, as follows:—

Sec. 5. Dues from corporations shall be secured by such means as may be prescribed by law; provided, that stockholders in corporations formed under the laws of this State shall not be individually liable for the debts or liabilities of such corporation.

No amendment being offered, the section was adopted.

Section 6 was read, as follows:—

Sec. 6. Corporations created by or under the laws of the State of Nevada, shall be subject to the provisions of such laws until the Legislature shall pass laws repealing the same, in pursuance of the provisions of the Constitution.

Mr. BANKS. I think the word "State," in the second line, has been accidentally substituted for "Territory." It is obviously a clerical error. The section should read—"Corporations created by or under the laws of the Territory of Nevada, shall be subject," &c. I will move to amend, by inserting the word "Territory," in place of the word "State."

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section was adopted.

Section 7 was read, as follows:—

Sec. 7. Corporations may sue and be sued in all courts, in like cases as individuals.

No amendment being offered, the section was adopted.

CURRENCY.

Section 8 was read, as follows:—

Sec. 8. No bank notes or paper of any kind shall ever be permitted to circulate as money in this State, except the Federal currency, under the laws of Congress.

Mr. HOVEY. I move to strike out that section.

Mr. BOURNE. What is the object of that?

Mr. BANKS. So that we can have banks here, if we want them.

Mr. BOURNE. And paper money?

Several Members. Yes; paper money.

Mr. BOURNE. Well, I go against all such stuff.

Mr. WARWICK. There is one very good reason why this section should be stricken out, and that is, that as it stands now, it is in contravention of the laws of the United States. It is well known that under the General Banking law passed by Congress, banks which issue paper money can, and doubtless will, be established here, and, quite probably, during the coming year. That may be expedient, or otherwise; and whether it is or not, is an open question, in my own mind; nevertheless, we have the fact staring us in the face, that a general banking law has been enacted by Congress, and that under it we may look, daily and hourly, for the circulation of paper money in our midst, under the sanction of the Government of the United States.

Mr. BOURNE. Very well; I understand that all these banks are included in the term, "Federal currency." They are established by the Federal banking law, and their issues being thus made currency by the Federal Government, therefore become Federal currency. Now, does the gentleman wish to have any other kind of banks? This provision, I understand, only keeps out State banks, that is, all banks whose currency would be other than Federal currency.

Mr. WARWICK. There is little doubt, I think—and any man who has watched the currency for the last year can hardly doubt—that before many years, the national currency will absorb every issue now emanating from every bank in the United States. Consequently, any such provision as this stands in contravention of the law of the United States. Judging from the peculiar circumstances under which we start out as a State, and from the general demand which is coming up from the people throughout the State for a change, or at least, for some alteration in our currency, there is no doubt in my mind that, under the banking law enacted by the Federal Government, in spite of any and every law which we can enact, banks will be established in this State; and that those banks, established under the sanction of the National Government, and issuing the national currency, will, in spite of anything which we can enact, go into operation immediately here in our midst. Consequently, I am in favor of striking out this whole section.

Mr. EARL. I hope the section will be stricken out, because of the fact that if we do have a paper currency here, we may at some future time want to regulate it in a little different way from the provisions of that Act of Congress. We may want a paper currency here redeemable in a particular manner, different from that in which the paper currency circulating in other States is redeemed, founded upon a basis more especially appropriate to this coast. We may want a currency, if you please, redeemable in gold and silver. But if this clause remains we cannot have it; we can have only a Federal currency under the laws of Congress. We can have no other class of banks than those which are established or authorized by the Act of Congress. I think we shall undoubtedly want some change; and we desire to establish a banking system peculiar to our own interests and necessities here. In

under that we may do that, I hope this section will be stricken out.

Mr. FITCH. I have an amendment here which I think will meet the case and be generally acceptable. I propose to amend the section so as to read as follows:—

Sec. 6. No bank note, or paper of any kind, shall ever be permitted or authorized to circulate in this State, except the Federal currency under the laws of Congress, and the currency of banks established under the laws of Congress.

Mr. EARL. That is the same thing.

Mr. NOURSE. I wish to say a few words in regard to that amendment. I know that most of the members of the Convention have lived in California, where they have only a metallic currency, and consequently they have had little or no experience in this infernal paper trash which has cursed almost every one of the Eastern States. But I come from a State which has been cursed for years with paper money, and I go for maintaining the currency of the United States, and the national banking law, which provides for a uniform system of paper money that will be safe and reliable. How far that can be done here, is a matter of business experiment, and not at all a matter to be settled by law. I hope gentlemen will profit by the experience of other States in regard to general banking systems, and that they will not, after seeing States after States swamped with paper money—after seeing all the evils which have come upon those States year after year, in consequence of having banks of issue which were perfectly worthless—attempt or consent to throw our new State right into the same vortex of ruin in which those States have been engulfed. In Minnesota, before the crash came, in 1857, there was plenty of gold and silver; but from the time of the crash not a dime remained, but year after year we had nothing but county scrip or State scrip, indorsed sometimes by swindling bankers. We had the Gosport Bank, from the State of Indiana——

Mr. JOHNSON. That was the bank you had, was it not?

Mr. NOURSE. Well, if it was, that was not saying much for the rest. The last I saw relating to that bank, was a notice stuck up on a little building in the rear of another building, which read in this way: "Gosport Bank taken here at par." That was about the only thing it was fit for.

Mr. JOHNSON. How much was the balance of your banks worth then?

Mr. NOURSE. The gentleman can draw his own inferences. We had railroad banks, and all sorts of wild-cat banks. They would adorn their bills beautifully, with the prettiest of pictures, so as to make them current, and just as soon as they got into circulation down they went, until they struck the bed-rock. Then we took the Illinois and Wisconsin State Banks, and thought that their notes were particularly safe; but just as soon as they began to appear prosperous, down they went, to somewhere about forty or forty-eight cents on the dollar. How many men were ruined by the means, it is impossible to say; but I know that the whole community was crushed under the load. I do hope that gentlemen will not insist on inaugurating such a system here, when they know that such has been the history of every State where paper currency has been tolerated.

Now we are not going to set ourselves up against the action of the General Government. I have no doubt that "when this cruel war is over," greenbacks will go up so as to be worth about their face in gold, and continue so; and the bonds of the United States will be as good as gold, and will buy gold at par. But as to having anything else foisted upon us here—as to attempting to set up a system of State banks, with the right to issue bank-notes, and all that sort of trash—I tell you, if we do it, we shall be guilty before God and man. We shall have such a sin to answer for, that we shall not know where to hide our heads, because if we sin in that way now, we do it with our eyes open; we do it with the experience of the whole country before us, and with the full knowledge of all the ruin that has been brought about in other States by this miserable, wild-cat, paper trash. I hope the motion to strike out will not prevail, but that this section, substantially as it is, will be adopted.

Mr. LOCKWOOD. I propose to act upon this matter somewhat in the light of experience. I have been opposed to such action as might endanger the Constitution before the people, upon the loyalty clause, but I warn members of the Convention that if we strike out this clause, or insert the clause proposed to be inserted in the Constitution, authorizing the issuing of paper money, it will be the skull and crossbones of the coming canvass. It is my honest conviction, Mr. Chairman, that not one third of the people in this Territory will vote for the Constitution with such a clause in it as that proposed to be inserted here, authorizing banks of issue. Designing men will go before the people, and tell them all about banks which have broken in the Eastern States, and raised the people of those States.

Mr. HANKS. Will the gentleman give me one moment; I believe he is mistaken as to the nature of the question. It is not proposed to insert any clause here authorizing a general banking system.

Mr. LOCKWOOD. I will speak of that in a moment. I am not, myself, opposed to banks, if they are founded upon a proper basis. If the Congress of the United States, sitting at Washington, has passed laws which provide for a general banking system, whether we will or not, that system will certainly be established amongst us. We cannot prevent it by any constitutional provision whatever. And, sir, provided such a system shall come among us under circumstances like that, then this provision cannot be made a bug-bear of in the canvass, when we take this Constitution before our constituents.

...it were proposed to inaugurate such a general system of wild-cat banking, I certainly would vote against it, and against a Constitution containing such a provision; but if, upon the other hand, it is only proposed to sanction what Congress has done, which we are bound to do, unless vetoed, it does not amount to anything that could be used against us. Let us act in this matter just as it is, and not accumulate...

Mr. WARWICK. The people seem to have a...horror of banks.

Mr. FITCH. I desire to make a verbal alteration in my amendment. I will modify it so as to read as follows:—

Sec. 6. No bank-notes, or paper of any kind, shall ever be permitted to circulate as money in this State, except the Federal currency and the notes of banks organized under the laws of Congress.

Mr. JOHNSON. Now, sir, I am in favor of adopting the amendment rather than striking out the whole section. From my political antecedents, I think I cannot be regarded as being opposed in any and every system of banking; yet, sir, I am as much as any gentleman opposed to this wild-cat banking system which has been spoken of. I think, however, that by adopting this section, with the amendment as it is now proposed, we shall relieve the new State from any possible danger of any such evils arising as have been suggested by some gentlemen who have preceded me on this occasion. I am therefore in favor of retaining the section with this amendment; otherwise I would advocate the striking out of every thing relating to this subject.

Mr. BANKS. Let us hear the amendment again.

The SECRETARY read the section, as proposed to be amended by Mr. Fitch.

Mr. BANKS. Now that is about right, and I hope it will be adopted.

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

RIGHT OF WAY.

Section 7 was read, as follows:—

Sec. 7. No right of way shall be appropriated to the use of any corporation until full compensation be first made therefor.

Mr. BANKS. I desire to move to amend by inserting in that section the words, "or secured," so as to read: "until full compensation be first made or secured therefor." But before submitting the amendment, I wish to ask a question. My recollection is that the word "tendered" was not inserted in the section of the Declaration of Rights relating to taking private property for public use, which was under consideration the other day, and my desire is to make this section correspond in its phraseology with that. I would inquire whether or not my recollection is correct?

The CHAIRMAN. No, sir; we did not insert the word "tendered". That is the recollection of the Chair.

Mr. BANKS. Then I move to amend this section, by inserting after the word "made," the words "or secured."

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

MUNICIPAL CORPORATIONS.

Section 8 was read, as follows:—

Sec. 8. The Legislature shall provide for the organization of cities and towns by general laws; and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, except for procuring supplies of water.

Mr. FITCH. I suggest whether it would not be well to strike out this exception—"except for procuring supplies of water."

Mr. WARWICK. It is the experience of every town and county, that sometimes public debts are necessary, and actually requisite for the well-being, and for the carrying on of such Governments. It is sometimes absolutely necessary that the credit of the town or city should be loaned.

Mr. FITCH. Will the gentleman allow me to interrupt him. This section does not prohibit the Legislature shall prohibit these powers, but that it shall restrict them, and the words which I propose to strike out, would intimate that, in that respect, cities and towns should be under no restriction.

Mr. CHAPIN. I hope it will not be stricken out. That subject was very thoroughly discussed in the former Convention. It was there considered that this was a privilege which should be accorded to every town in the State. Do not, for heaven's sake, restrict the towns in regard to procuring supplies of water, but let the section remain as it is.

Mr. KENNEDY. There is one objection which I have not heard advanced in connection with this subject, and that is, how can you make a general law which will be applicable in cases like this? For instance: in the town of Austin a much larger expenditure of money may be required to supply the town with water than would be necessary to supply other towns, and for that reason I think we cannot make a general law in regard to this matter. It is an absolute necessity to have water, and if a town needs it, let it go to as heavy an expenditure for that purpose as it may fit.

Mr. EARL. The only argument in favor of the exception that I can see, is this: that if a city has been limited to an expenditure of two or three hundred thousand dollars, and if the authorities of that city find that that amount has been exhausted in endeavoring to procure supplies of water, without this provision they must have their charter amended before they can have the right to exceed that amount of expenditure. I do not know but it would be as well, on that account, to leave the section as it is now.

Mr. FITCH. I am not particular about the amendment. I understand it was left in at the particular request of some gentlemen who are engaged in a project for supplying the city of Virginia with water.

Mr. CHAPIN. No, sir; that is not so.

Mr. FITCH. Then I have been misinformed.

The question was taken on the amendment proposed by Mr. Fitch, and, upon a division, it was not agreed to—ayes, 6; noes, not counted.

No further amendment being offered, the section was adopted.

PACIFIC RAILROAD.

Section 9 was read, as follows:—

SEC. 9. The State shall not donate or lend money or its credit, subscribe to or be interested in the stock of any company, association or corporation, except corporations formed for educational or charitable purposes; provided, that the State may issue bonds to an amount not exceeding three millions dollars, to aid in any railroad enterprise, to the company that shall have completed a railroad to the State line connecting the State with the navigable waters of California, or with the navigable waters of the Sacramento River; but no law to issue bonds shall be effective, unless sanctioned by a vote of the people.

Mr. PROCTOR. I move to amend the section by striking out the word "three" in the proviso where it occurs before the word "millions," and inserting, in lieu thereof, the word "ten."

The question was taken, and the amendment was not agreed to.

Mr. BANKS. I move to amend by striking out the word "three," and inserting the word "five;" also by inserting after the word "bonds," the words "or secure the payment of principal and interest, or both principal and interest on bonds so issued." I have also a further amendment to offer to the section, when these shall have been disposed of.

The section was read as proposed to be amended by Mr. Banks.

Mr. FITCH. If we are going to give five millions, I do not know but it would be as well to go a little further. I move to amend by striking out "five," and inserting "twenty-five."

Mr. BOURNE. That is it; I second the amendment.

The question was taken on Mr. Fitch's amendment, and it was not agreed to.

Mr. JOHNSON. Now, Mr. Chairman, I think this is getting a little heavy, [laughter] and particularly so, when we consider that we shall have to go before the people with this Constitution. I am perfectly content to go before the people, and say that we have given the Legislature power to issue bonds to the extent of three millions of dollars, to aid in this railroad enterprise. I am quite willing to let the section stand without any alteration or change. But if you increase the amount, I am opposed to it. Now, sir, three millions of dollars is a large sum of money—quite as large as we can afford to contribute to this enterprise. And, in my judgment, the people of this State in prospective, will not be willing to see incorporated into their Constitution, not only a possibility, but indeed the probability, of very soon having added to the indebtedness of the State, an amount of five millions of dollars. I believe, that if we make this amendment, it will exercise a most potent influence against the adoption of our Constitution. Independently of that fact, sir, we have not the means to justify us in issuing these bonds. We shall not be able to pay the five millions of dollars when the bonds become due, nor to pay the interest upon the bonds, and support a State Government at the same time. What was the great objection of the people last fall, against the adoption of a State Government? It was, that we could not then support a State Government. We are not much better able now, than we were then. This is a matter which is proposed to be left to the people; it is true, and the people have the power to ratify or reject it hereafter; but the amount specified in this amendment would induce many men to vote against the Constitution, who would otherwise vote for it. As I said before, I am willing to leave the section just as it stands in the old Constitution, but I am opposed to increasing the amount a single dollar.

Mr. FITCH. Is another amendment in order at the present time?

The CHAIRMAN. It is, if it is an amendment to the amendment.

Mr. FITCH. I propose to amend by inserting after the word "dollars," in the amendment now under consideration, the words, "provided further, that no bonds shall be issued bearing interest for a greater sum than ten per cent. per annum."

The question was taken on the amendment proposed by Mr. Fitch, and it was agreed to.

The question recurred on the amendment offered by Mr. Banks, as amended on the motion of Mr. Fitch.

Mr. BANKS. At the request of a number of gentlemen who are interested as much as I can be in the construction of the Pacific Railroad, I withdraw so much of my amendment as proposes to strike out "three millions of dollars" and insert "five," leaving that portion of the section as it stands now.

The CHAIRMAN. I do not think the amendment can be withdrawn, after it has been amended.

SEVERAL MEMBERS. "Leave, Leave!"

The CHAIRMAN. If there is no objection, the amendment may be withdrawn. The Chairman hears no objection, and the amendment is withdrawn.

Mr. BANKS. The reason I have for proposing to insert the other words contained in my amendment is just this: I desire that the power shall exist in the Legislature to provide for the payment of the interest upon the bonds of the company, instead of having bonds issued directly by the State. That is a policy, in the encouragement of railroad enterprise of this

...which I think is fully as good as, if not better, than that of the issuing of bonds directly by the State, and I want to leave the Legislature discretionary power in that matter. The section will then read:—

"Provided, That the State may issue bonds or receive an assignment of the principal or interest, or both principal and interest of bonds to an amount not exceeding [illegible] millions of dollars; provided, further, that no bonds shall be issued bearing interest for a greater sum than ten per cent. per annum, on each bond"—etc.

I will suggest, however, that this latter proviso ought to be made a separate section.

Mr. LOCKWOOD. I propose, as an amendment to this section, to strike out all after the words "charitable purposes," so that the section will read as follows:—

SEC. 6. The State shall not donate or loan money or credit, subscribe to or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes.

Mr. JOHNSON. I think that amendment is not in order just at present, as there is an amendment to an amendment already pending.

Mr. FITCH. I will suggest that my amendment, already adopted, will read better if inserted immediately after the words "navigable waters of the Mississippi River."

The CHAIRMAN. The Secretary will read the section as it will then stand.

The SECRETARY read the section, as proposed to be amended by Mr. Fitch.

Mr. FITCH. I perceive a still further difficulty with that sentence, as it applies only to the issuing of the bonds, and not to the security upon the bonds. If the Convention will permit me, I will withdraw it.

No objection being made, the amendment was withdrawn.

Mr. FITCH. Now I move to add, after the words "three millions," the words "at a rate of interest not exceeding ten per cent. per annum."

The question was taken upon Mr. Fitch's amendment, and upon a division it was agreed to—ayes, 18; noes not counted.

The question recurred on the amendment proposed by Mr. Banks.

Mr. JOHNSON. Now I propose a further amendment, which is, to strike out the word "ten," in the amendment just adopted, and insert the word "seven," so as to read—"at a rate of interest not exceeding seven per cent. per annum."

Now, sir, I do not propose to go before the people of this Territory with a Constitution which provides, if we become a State, for paying ten per cent. interest on our State securities. That is a rate of interest far beyond any which can be found established by any State of the Union, and I think the rate I propose is quite enough. At seven per cent. per annum, if the credit of the State is to be established upon a just basis, there can be no question but that the bonds of the State will be as good as any railroad bonds in the market; and to issue bonds bearing the rate of ten per cent. would only operate to the injury of our credit.

Mr. FITCH. I will say, that I shall be entirely satisfied with that rate of interest. I think seven per cent. is enough.

Mr. WARWICK. I desire to ask if the gentleman from Oronsby is aware of the present rate of interest paid by the General Government?

Mr. JOHNSON. I believe it is less than seven per cent.

Mr. NOURSE. It is seven and three-tenths per cent., I believe.

Mr. WARWICK. Is there not some portion of the government loan on which ten per cent. is paid? That is my impression.

The question was taken on the amendment of Mr. Johnson, and it was agreed to.

The question was next taken upon Mr. Banks's amendment, and it was agreed to.

Mr. BROSNAN. I move to amend the section by adding the following:—

"Provided, further, that the amount of money so raised, if raised on State bonds, shall be expended upon such railroad within the boundaries of the State."

Mr. FITCH. I am opposed to that amendment, because I consider it to a certain extent impracticable. For instance: if the Legislature enacts that such bonds, to the amount of a million or more, shall be given to the railroad first reaching the State line, then under due process of law those bonds are issued, and although of course the railroad company cannot expend them until they get them, yet after they are issued the State has practically no control over the direction the money shall take, as to whether it shall be expended within or without the State.

Mr. COLLINS. I would like to inquire the reasons for the amendment proposed by my colleague?

Mr. BROSNAN. My reason is, that the money could then be expended in doing some of the work within the State, and not to do it all within the limits of another State or Territory. That is the only reason.

Mr. WARWICK. I sincerely hope that this proviso will not be adopted. The main object of this Territory or State is, or should be, to secure a connection with navigable water. It is well known that we are now paying out millions and millions of dollars for freights, and it is exceedingly desirable that we should have, as early as possible, some means of communicating with navigable water. The proposition made here, is for the encouragement of the building of a road for our own benefit, and we offer this as a bounty to the railroad company, for that end. I contend that we are just as much benefited by the road reaching our doors, if the greater part of the expenditure for the improvements are made in another State, as we should be if the whole of the three millions were expended within our own borders. The benefit derived will still be commensurate with the amount expended, wherever it may be

necessary to expend it upon the road; and I sincerely hope, therefore, that this amendment may not be incorporated into the section, but that their bounty will be granted to any line which will first connect this State with navigable waters, without specifying whether it shall be expended within our own borders or in making any borders. The requirement is, that the road should connect us with navigable waters, and for that purpose alone, the people of the State are authorized to make such a loan.

It is well known, Mr. Chairman, that we are paying out enormous sums, annually, for freights. We carry on an immense business with the other side of the mountains, and that business is increasing every year, causing immense outlays for the building of roads, and for freights. The money which we shall pay for freights within the next two or three years, would, of itself, be sufficient to pay this loan ten times over. And, in addition to that, by securing the construction of this road, we shall be developing our State, to an unexampled extent. I do not know but it would be worth twice or three times the amount proposed here, if the railroad could be made to reach the far-off County of Lander, so as to connect that region with navigable waters. It is well known that we have fabulously rich mines in that county, many of which are still undeveloped; but they will be opened very speedily when we once obtain facilities for communication, such as a railroad would give us. Why, sir, if the railroad were once completed to Lander County, there are thousands of tons of rock now lying there, regarded as worthless, which would make their owners millionaires. It is for these reasons that we propose to offer this bounty, and I sincerely hope that no selfish project for raising the value of this loan, by attempting to secure its expenditure within our own borders, will be allowed to prevent the completion of this grand railroad.

The question was taken on Mr. Broomall's amendment, and it was not agreed to.

Mr. HAWLEY. I have been absent a few hours; and have not had an opportunity to converse with gentlemen upon this question; but the idea has suggested itself to my mind, that it is an invariable rule that when an article of this sort is incorporated into a State Constitution, it should prescribe the manner in which the interest shall be paid. If I am mistaken on that point, I should like to be corrected; but I think the Legislature should be authorized to issue bonds, with proper coupons attached.

Mr. FITCH. The section provides that the bonds shall be issued "upon such terms as the Legislature may prescribe," and the Legislature can attend to these matters of detail.

Mr. MOORE. I understand the question to be now on the adoption of the section as amended. If that is the case, I move to strike out all after the word "incorporation," so that the section would read as follows:

"SEC. 4. The State shall not donate or loan money or its credit, subscribe to or be interested in any work of any company, association or corporation."

I suppose I shall be in the minority on this subject, but I am used to that. [Laughter.] Nevertheless, I wish to say that I think I have had experience, which perhaps not all the members of the Convention have had, and opportunities of seeing the working of these things. I propose to state to the Convention in about two minutes, the result of my experience and observation. I do not make any charge for it. [Merriment.] I am as desirous as any member of having the Pacific Railroad built, and indeed, it would be very singular if any man living in Nevada Territory could be found who was opposed to having a railroad built to cross our mountains and reach our mines here. I suppose nothing could be more desirable than that for this community; and if I supposed this proviso would help the road at all, or, at all events, to a degree bearing any fair proportion to the amount of debt which it provides for incurring, I would most certainly be in favor of the section as it stands. But I wish to strike out all that latter portion of the section, because I believe, and I tell you, Mr. Chairman, that you will hereafter find it to be true, that instead of hastening the road by this means, we shall be putting it back. That may not seem to be a sensible conclusion, but I will tell you how such a provision will work. In Minnesota, I was one of a minority of sixty-six, when there were twelve hundred votes against us, opposed to granting aid of this sort for a railroad in that State. For the want of such a railroad our business there was prostrated, and this railroad was expected to build it up. The railroad was to run through some of the finest lands in the world, and it had liberal grants from Congress, consisting of alternate sections of land for a breadth of six miles, for the whole length of the road, to begin with, and the route was one over which it was easy to construct a road. We were all impatient. We must have a railroad; and as we thought we could not wait until it could be built in the natural course of things, by the development of the industry and the resources of the country through which it was to pass, we were called upon to aid it. We were asked to give our credit to the extent of five millions of dollars to this and other railroad enterprises in the State. Well, we went through that operation, and voted to issue the bonds, and the result was that, at the end of only one year from that time, instead of barely sixty-six, who originally voted against the proposition, you could not have found, if the question could possibly have been submitted again, six men in the State who would have voted for it. Now, how does it work? The railroad, which we are asked to aid, has received, in the first place, most magnificent grants from the General Government. It is abundantly aided by the Government—so abundantly that

...if there is any good faith about the management, I believe it will be built very speedily, provided you will only let it alone. It can and will be built reasonably fast, if there is nothing to be gained by delay. We cannot get it here a minute...do what we will, but it will be built as fast as it is possible to build it, if it is not clogged with. But you leave this clause in your Constitution, giving the railroad another chance for securing help from the public, and you find the managers hanging back, and hanging back continually, until they get their hands upon that three millions of dollars. If you shut them out at that, if you make them understand that the State cannot give or will not give a cent, knowing that they have united the Federal Government dry, and have got all the help that they can expect to receive from the State of California; they will be ready to push on and try to make the road, and will expect, as good managers, to make it a paying road. They will display whatever energy they possess, and they will undoubtedly get it through in some way. They have enough means already to put it through in a reasonable time, but they are like other men, and if they can see a chance of getting anything more they will try to get it. If, in addition to the magnificent United States grants, and the help they have already received from California, they obtain the three millions which they are endeavoring to get from Nevada, they will be able to build this road without the cost of one dime out of their own pockets, or a liability of one dollar upon the road itself. Of course they will do that if they can, and if you sanction this project of a grant to them by the Legislature, or a loan of the credit of the State, you in effect hold out an inducement for them—to do what? To hurry up the road? No; but to hang back, and keep hanging back, until they can grab that three millions of dollars. Now I assure you that that was just the result in the State of Minnesota. They went on building and grading the road, and apparently putting forth great efforts, as long as they could get bonds issued to them, and when they had got all they could, then the thing collapsed; and now the State of Minnesota is saddled with the load of two and a half millions of those bonds, upon which not a cent of interest has ever been paid. The State has struggled along under this burden until she stands at last in a position where she must either repudiate those bonds outright, or she must pay them. And the brokers are so confident that she will have to pay them eventually, that they are now paying from 20 to 30, and even, in some cases, 40 cents on the dollar for the bonds.

Now, sir, for my part, I do not believe that this system of State loans is a good system anywhere. Let us look at the history of other States, and I ask, should we not learn something, gentlemen, from the experience of other States? If you look through the history of almost every State in the Union, you will find that that system has proven to be most injurious. Take New York, if you will; a State which has derived more benefit from internal improvements than any other, and has been most liberal, perhaps, than any other in granting State aid. But what do we find? That the Erie Railroad, which was so munificently aided by that State, had at last to be built by private enterprise. As long as it was the child of public patronage, living upon public plunder, it hung fire, and never did get through until all hope of further State aid had been abandoned. Then, and not till then, it was put through by private means, and became a good paying investment. So it has been in every other State. The system of State loans to internal improvements has in every State proved a disastrous failure, and in every State where it has been adopted, the load of debt has been saddled at last upon the State. That has been the experience of New York, of Pennsylvania, of Missouri, and of many other States which I might name. Look at the enormous debt with which some of those States have been saddled for the building of railroads which have never been built, and some of which very likely never will be built. Now, shall we, with all this experience before us, when the cry against our State organization is "poverty, poverty, poverty!" when the people say "we cannot possibly afford to run a State Government," adopt this same ruinous policy?

If we cannot pay for the running expenses of a State Government, what is going to be the value of our guarantee to pay the interest on those bonds, the interest alone on which will amount to two or three hundred thousand dollars a year? How much is such an indorsement worth? It is ruinous to us, because it plunges us hopelessly into debt, and it does not help the parties to whom we give such a guarantee. It is entirely useless to them—a mere mockery. While we are plunging ourselves into debt, we are not helping anybody. Now, will not gentlemen pause before they assume so grave a responsibility? Circumstances are very different now from what they were when this section was passed by the other Convention. Our ability to pay is certainly smaller at the present time than it was then. What will be the value of our scrip or of our bonds, which we shall be obliged to issue for the necessary expenses of the Government, if we also guarantee the payment of this enormous amount of interest, to the tune of two or three hundred thousand dollars a year, which we are to pay for the benefit of this already rich corporation, in addition to the two or three hundred thousand dollars which we shall have to pay for our running expenses? It is well enough to be generous, and far-seeing, and not niggardly, but certainly I think we ought to take care to cut our garments according to our cloth. We certainly have not the means to pay this enormous amount of interest; then why should we go through the farce of guaranteeing it?

I do not know as I shall have on this question a single vote to help me, but I could not refrain from giving the results and convictions which a little experience has impressed upon my mind. And I do not see why we should take stock even in corporations for almost all charitable purposes. Anything we have to do in that line we can better do for ourselves, without taking part in somebody else's enterprises. There is no saying better or wiser than this, that that government is best which governs least; and when we come to taking stock in corporations of any kind, I think we go far beyond the proper sphere of government.

Mr. FITCH. I admire the ingenuity with which the gentleman from Washoe has argued his side of the question, but it occurs to me, sir, although I may perhaps in that do the gentleman injustice, that there may be other reasons underlying his opposition. Now, sir, if I were so fortunate as to represent the county of Washoe, I might perhaps be opposed to granting aid to this road, or to any other road designed to connect this State with the navigable waters of the Pacific Ocean, or the navigable waters of the Mississippi River. For, however important such a road may be to the rest of the community, it is well known that the county of Washoe has grown rich, and is to-day rolling in wealth, on account of the necessities of Storey County. Our miners in Storey County are developing mines of enormous wealth, of extraordinary richness, but the high prices of freight which they are compelled to pay, and the high prices of all the necessaries of life which are an inevitable consequence, have resulted hitherto in preventing all but a very small proportion of that wealth from remaining in Storey County. Now, these high prices of freight would be obviated by a railroad across the mountains. But we have no railroad, and the consequence is that the produce of Washoe County has sold and is selling at enormous prices, and Washoe to-day is rich, while the county of Storey, which produces more wealth than all the rest of the Territory together, is poor.

Mr. NOURSE. Will the gentleman from Storey allow me to interrupt him? I wish to say merely that I am sorry such a motive as that suggested by the gentleman could have been attributed to me. No thought ever entered my mind in regard to the effect upon Washoe County. My own view of the matter is this—that Storey County is this Territory. Without Virginia there could be no Washoe and no Carson, and as Virginia prospers so do we prosper. No such idea as that which the gentleman suggests ever crossed my mind.

Mr. FITCH. I am glad that the gentleman has had no such idea, but nevertheless, it is a fact that, while we find Washoe rich and her representatives clad in purple and fine linen, driving blood horses, and drinking champagne cocktails, on the other hand, we find the representatives of Storey County in a state of impecuniosity. [Merriment.] Now, I do not want a blow struck against Washoe County, but I want to see some portion of the wealth of Storey County allowed to remain at home. I would like to see the miners of Storey County reaping some portion of the rewards of their toil; and not only the miners in Storey, but in many other portions of the Territory, in regard to which it is not necessary for me to speak at length. We all know that if we had railroads we should not only be enabled, by the reduction of the enormous tariff of freights and the high cost of food, to get the necessaries of life at a low figure, but also to send a large amount of our ores to points where cheap power, fuel and labor are comparatively abundant and cheap, and thus we should vastly increase the wealth of the Territory. I honestly believe that if the whole three millions of dollars here provided for were issued, the first year after the railroad should be completed it would save three times that amount to the people of Nevada in the matter of freights alone, to say nothing of numerous other important advantages.

Now, as to the assertion that State aid will not build the railroad, I can only say that the Pacific Railroad is now in process of construction from Sacramento in two different directions, and is making very considerable progress; but the managers are impeded in their progress by a lack of money, and by the indisposition of capitalists to invest in the enterprise, because it does not promise immediate returns. Now, if we authorize our Legislature to provide for offering a bounty for the first road which shall cross the mountains to our boundary, it is not to be supposed that they will necessarily go to the full extent of the three millions of dollars, but they may fix it at one million, or two millions, or any other sum they please. The result of that will be, that the most desperate efforts will be made by the rival roads, to get to the State line first, and probably the building of the road would be expedited in that way as much as twelve months, or six months at the very least. I believe it would hasten the completion of the road a full year; and by having the road here one year sooner than it would otherwise come, we should save three times the amount it would cost us. But I will not dilate on this subject at great length, but members should wish me to die early.

Mr. STURTEVANT. I desire to ask a question of the gentleman from Storey. If we will go for this railroad proviso, will the gentleman coincide with the views of the Washoe delegation in relation to Article X?

Mr. FITCH. I think when that article comes up, the gentleman from Storey will be found not very far from the Washoe delegation.

Mr. CHAPIN. It seems to me that the gentleman from Washoe (Mr. Nourse) has entirely overlooked the careful provisions made in the section. This donation cannot be made until the road shall have reached the line of the

...ure, and I cannot see the philosophy of the argument of the gentleman; which he states and gives in every inducement for the managers of the road to hold back, and not prosecute the work until this grant is made. Why, sir, it seems to me there is every inducement which can be to hurry up, and get the road through quickly, so that by reaching the line they may secure this bounty. I think, when it reaches the State line, we shall be in such a condition that we can well afford to grant these three millions of dollars; and we could well afford to give even five millions, to secure that object, and still save money by it. We should be the gainers by hastening the road one year, upon calculation alone. I had thought that there was every possible inducement for them to put forth all possible speed in order to secure this bounty, and, certainly, the amount which the State would save in a single year, will more than cover the cost.

Mr. LOOKWOOD. I desire to offer an amendment to the amendment offered by Mr. Nourse, and it is one which strikes me as being highly proper.

The CHAIRMAN. It will not be in order until the amendment proposed by the gentleman from Humboldt (Mr. Banks) shall have been disposed of.

Mr. NOURSE. I think the Chair is in error. I think the amendment offered by the gentleman from Humboldt was adopted.

The CHAIRMAN. The Chair stands corrected; the amendment will be in order.

Mr. LOOKWOOD. I move to amend, by striking out all after the words "charitable purposes." The difference between this amendment and that offered by the gentleman from Washoe is, that my amendment leaves in the words "except corporations formed for educational or charitable purposes." It still strikes out all of the proviso. Now, it is well known that provision has been made by act of Congress for donating to this State, when it shall become a State, certain lands, for the establishment of a State Seminary. If we inaugurate a State Government, the State will be interested in that matter; and I do not believe we ought to cut the State Government off from the privilege of taking an interest in a corporation of that kind.

Now, gentlemen have talked here very flippantly and lightly about this amount of three millions of dollars. In the commencement, however, let me disclaim any motive of hostility to the Pacific Railroad. I think we are all in favor of that enterprise; but for one, while I would like to be possessed of property, still I do not believe in the propriety of robbing somebody else in order to obtain it. The taxable property of this Territory amounts, at the present time, to about twenty-five and a half millions of dollars, and there was paid into the Territorial treasury last year about ninety thousand dollars for taxes. I am referring now to facts and figures. The interest on this three millions of dollars, at seven per cent. per annum, is two hundred and ten thousand dollars a year, or about three times as much as we received for taxes last year. Now, Mr. Chairman, a proposition of this kind, under such a state of affairs, reminds me of an anecdote which is related of a gentleman in my county who, it was well known, did not own property to the value of a cent in the world, but who, one day, supposing himself to be in the last stages of his existence, sent for a lawyer and requested him to draw up his will. The lawyer went on, and the man proceeded to bequeath a hundred thousand dollars to this charitable institution, another hundred thousand dollars to that charitable institution, a like sum to another, and so on; and upon the attorney asking him where the money was to come from to pay these munificent bequests, he replied, that it was no matter about that, he only wanted to show his good will.

I do not believe that this grant of three millions of dollars would bring the railroad one month sooner into our State than it would otherwise come. I do not believe that the people now inhabiting this Territory are able, in addition to the expense of supporting a State Government, to pay the interest on those three millions of dollars. These are facts—stern, stubborn facts—and they will stare the people in the face when they come to vote upon the adoption of the Constitution we are framing. Do gentlemen believe that this railroad, which is to cost a hundred millions of dollars, is going to be expedited in its onward course by a paltry grant like this, or that it is going to be retarded for the want of three millions in bonds of the poor little State of Nevada? I am utterly opposed to doing anything of the sort, and shall certainly vote against it. I hope that some gentleman who is advocating the issuing of these bonds will show us how we are going to pay them.

Mr. HAWLEY. I wish to say a few words on this subject, and more especially since the amendment proposed by the gentleman from Washoe, (Mr. Nourse,) which I had expected would have fallen stillborn in the Convention, has met with a second. But for that fact I would not have taken occasion to trouble the Convention with any views of my own upon this matter. If there is any one subject which has attracted my attention more than another throughout my life, it is this subject of internal improvements, and I therefore desire to offer a few remarks in opposition to the views expressed by the gentleman from Washoe. My attention has been called, however, to the fact that the hour of adjournment has about arrived, and I will move that the Committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the Chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article VIII, entitled Municipal and other Corporations, had made some progress therein, and had directed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

Mr. BROSNAN gave notice that the Judiciary Committee would meet this evening.

On motion of Mr. DeLONG, at five o'clock, the Convention adjourned.

SIXTH DAY.

CORNING, July 8, 1856.

The Convention met at nine o'clock, A. M., and was called to order by the President.

The roll was called, and twenty-eight members responded to their names; those who failed to respond being Messrs. Ball, Fitch, Folsom, Halsey, Jones, Kennedy, Morse, Parker, Warwick, Wellington, and Williams.

Prayer was offered by the Rev. Mr. Riley.

The journal of yesterday was read and approved.

On motion of Mr. DUNNE, leave of absence was granted to Mr. Warwick until Monday afternoon.

Mr. McCLINTOCK. I wish to state the reason of the absence of my colleague, Mr. Wellington, as a matter of justice to him. I am informed that he is so much indisposed as to be unable to be here.

Mr. SHURTLEFF. My colleague, Mr. Folsom, also is quite unwell, but I think he will be here, nevertheless, in a short time.

REPORT.

Mr. TOZER, from the Committee on Engrossment, reported that that committee had carefully compared the ordinance, preamble, and Article I of the Constitution, entitled Declaration of Rights, and found them severally correctly engrossed.

On motion of Mr. DeLONG, the ordinance, preamble, and Article I, were ordered on the general file.

JUDICIARY SYSTEM.

Mr. DUNNE offered the following resolution, which was read by the Secretary:

Resolved, That a committee of five be appointed by the Chair, to draft a memorial to Congress, requesting the passage for an alteration in our judiciary system, to be forwarded to Congress in the event of the non-adoption of the Constitution.

Mr. DUNNE. I think it eminently proper that that resolution should pass, as we all agree that a great necessity exists for an alteration in our judiciary system, as at present constituted in the Territory. As that necessity is made by the friends of the Constitution one of the main arguments for their favoring its adoption, and as we must look forward to the probable defeat of the Constitution, as a possible defeat at least, I think it would be proper for us to take such action as is here proposed. This resolution contemplates, that in case the Constitution should be defeated, a petition of that prayer, for an alteration of our judiciary system, should be placed before Congress at the next session. The resolution will not be presented, of course, if the Constitution is adopted, and therefore it will do no harm; but I am entitled to the wish of every member, in case it should not be adopted, that that matter should again be brought before Congress in a proper shape.

Mr. FITCH. I hope this resolution will not pass. I do not think we can do anything which would have a greater tendency than this to secure the defeat of the Constitution. If we do anything expressing officially a doubt as to the result of our labors, we certainly tend to make others think the same way, and thereby greatly discourage the friends of a State Government. Besides, I do not think that anything coming from this Convention would have any great amount of influence at Washington if our labors should be rejected by the people.

Mr. BANKS. I think that resolution is assuming a little too much, and I do not think that if the Constitution should be rejected, a petition of that kind coming from this Convention, would have any more weight with Congress than a petition from as many private individuals, on this or any other matter. If the Constitution shall be rejected, there will then be ample time to memorialize Congress in regard to making this change, and I see no reason why we should anticipate the action of the people in that matter. Again, it is taking a rather unfair advantage in the matter of deciding upon the Constitution. It is saying to the people that they have sent us here to frame a Constitution which we do not expect will be ratified, and do not even propose or desire to have ratified. It would be so construed at least. I consider it out of place, injudicious, and in no respect desirable.

Mr. DUNNE. In the event that this resolution is rejected, what more potent argument could be adduced in Congress against the change asked for in our judiciary system, than calling up the fact that a resolution of this kind was introduced in the Constitutional Convention, composed not of merely private individuals, but of representatives of the people of the Territory of Nevada, and that they had declared, by their action thereon, that they did not desire any change in the judiciary system? It will show the sense of the Convention to be that they do not deem it necessary, even with the possible alternative of the Constitution being rejected, to repeat the prayer heretofore made to Congress for a revolution or change in the judiciary system of our Territory; that in fact, they do not wish any change to be made. Gentlemen will agree with me, I think, that much opposition would be made in Congress to

...change of our judiciary system, and this ... Convention would no doubt be most ... a change which I know we all de... in case we continue under the form of a ... Government.

Mr. DeLONG. I am opposed to this resolution. I know that many are going to vote for the Constitution, in order that we may be relieved from the present judiciary system; but ... a resolution like this, many will say ... no use of adopting the Constitution in ... to secure that end, because we can trust ... Congress. It will therefore be used as an ... directly against the adoption of the ...

The gentleman says, if we defeat this resolution, this fact will look bad for us in Washington. Why then did he introduce it? If he had not introduced the resolution, certainly it would ... been beaten. I think it will be a stultification of our own action to adopt a resolution of this kind. It is easy enough for the gentleman to withdraw the resolution, and then it will not be beaten.

Mr. PITCH. There is another point to be considered, and that is, it is among the remote possibilities that Congress will not occupy its time in so amending our proceedings as ever to ... whether a resolution of this kind was introduced or not.

Mr. TOZER. We were selected to come here for a specific purpose, namely, to frame a State Constitution and organic law for the people; and it behooves us to make that instrument as acceptable to the people as possible, and when we have done so to submit it to them for their adoption or rejection. It is not our place to provide for any contingencies, or do anything further than to make the instrument as perfect as we are able to. I think it augurs very ill for the success of the Constitution we are framing to adopt such a resolution as this, looking to its defeat, and I hope the resolution will not ...

Mr. EARLL. I shall vote against the resolution, for the reason that its tendency would be to prevent the passage of this Constitution. I think we ought to adopt a State Constitution, and a State Government, and we may rest assured that Congress will not give us such a bill, amending our judiciary system, if we reject the Constitution. I hope the resolution will be withdrawn.

Mr. BROMAN. I regret very much that my friend from Humboldt should have introduced this resolution, and I do not apprehend that it will receive anything more than the respectful consideration of this Convention. I would be very much gratified if the gentleman would withdraw it before a vote is taken upon it. In the first place, it is calculated, in my judgment, to do mischief, because it furnishes a pretext for men to vote against the Constitution which we may adopt here; and, in the next place, Mr. President, Congress, in my opinion, would pay no attention to any such representation made from this body. Congress and the nation, at the present time, need the assistance of the State of Nevada, and that is why they have desired, after the repeated defeats of the Constitution which was before presented to the people, that we should make another effort to adopt a State Constitution and become a State. It is in order to strengthen the arm of the General Government, in this hour of its peril, when a new nation, and a more perfect one, is, we trust, about to be created. And the very consideration, with Congress, of the necessity of this strength in the councils of the nation, would tend to cause them to turn a deaf ear to the application of this Convention for any change in our organic act, in the manner provided by the resolution of the gentleman from Humboldt. Besides, Mr. President, if this Constitution should be defeated by the people, this same application might then be made, by those who had the immediate direction of the former memorial, on the meeting of Congress, with quite as much, if not more effect, than it could be made as emanating from this Convention. I therefore hope that the gentleman will withdraw his resolution, and if he does not do so, I hope he will stand alone in its support before this Convention.

Mr. CHAPIN. I am surprised that gentlemen do not appreciate the policy of the gentleman from Humboldt, who proposes, in case this Constitution is defeated, to have something to fall back upon. He reminds me of an acquaintance of mine, of whom it is said, that while he was about to be married to one woman, he had got, as the slang phrase is, "stuck" after another woman, and finally made an arrangement with her that as soon as the first woman should die, he would marry the second. I rather think that my friend from Humboldt, who proposes this arrangement, is "stuck" after the defeat of the Constitution.

Mr. DUNNE. I am sorry to see that my motives are impugned, in introducing this resolution.

Mr. CHAPIN [in his seat]. Not a bit; no, no.

Mr. DUNNE [continuing]. And I also wish to call attention to this fact: Those who are opposed to this resolution, seem to think that it is introduced for the purpose of making buncombe capital against the Constitution, and they say we should not adopt it, for the reason that it will give people an opportunity, or an excuse, rather, for voting against the Constitution, who otherwise would feel compelled to vote for it, although they really, at heart, do not believe that we are prepared to support a State organization, and can scarcely afford it. They think that this class of men, in order to avoid a great evil, will choose the lesser one. Now, I think it is unfair to place the people in a position where they will be compelled to adopt the Constitution, although it may be against their will. It is unfair to refuse them some means of escaping from that

evil, if they believe it to be an evil. If members of the Convention believe that there is danger in allowing the Constitution to go before the people with any other means whereby they can have an opportunity of remedying the great evil which has been complained of, then I say it is wrong, and unfair, to refuse to do that thing. We should open up every avenue of escape, and not tell the people, you must adopt the Constitution, and submit to the evils which it will entail upon you, or you must submit to all the evils which now exist." I think, in that respect, gentlemen forget that their own motives are open to censure, or they would not, themselves, be making charges against others.

Mr. HAWLEY. The sense of the Convention has been taken so repeatedly in respect to the expediency of the adoption of a State Constitution, that I think our time can be more profitably spent than in discussing the subject further. The argument which the gentleman from Humboldt has made I think discloses his real course, and moreover, it defeats itself, when he asserts that the true sense of the Convention can be obtained upon that resolution in the event of the rejection of the Constitution. All that has been said goes to show that, so far as relates to the rejection of the Constitution, every member here is in favor of a change in the judiciary system in that event; and I think we need not fear but that Congress will be, as it has been heretofore, fully advised of our sentiments on that subject. The gentleman expresses an apprehension that the rejection of the resolution will damage our interests at Washington. Now, if Congress shall become aware of the fact of such rejection it can only be through a perusal of our debates, and when they come to read those debates, they will also ascertain, and at the same time, that it is the unanimous sense of the Convention that such a change should be made in our judiciary system, in the event of the rejection of the Constitution. The desired object can be obtained without passing any such resolution, and without in that way intimating to the voters of this Territory that it is our wish that the Constitution should be rejected. We came here to frame a Constitution and form of Government which shall be acceptable to the people, and I believe the interests of the Territory demand the adoption of such Constitution and form of Government. Let us, therefore, throw no obstacle in the way, but let us by every means in our power, and on every proper occasion, give expression to the opinion that the Constitution should be adopted, and endeavor to leave that impression in the minds of our constituents.

Mr. LOCKWOOD. I move the previous question.

Mr. FITCH. I move to lay the resolution on the table; that is the best way to get rid of it.

Mr. LOCKWOOD. I will withdraw my motion.

The question was taken on the motion to lay the resolution on the table, and it was agreed to.

THE JUDICIARY COMMITTEE.

[Mr. COLLINS in the Chair.]

Mr. HAWLEY. Upon consultation among members of the Judiciary Committee, we have come to the conclusion that there has been an unintentional oversight in constituting the committee. I therefore move, in behalf of the committee, that two members be added to the Committee on the Judiciary, one of whom shall be the President.

The question was taken, and the motion was agreed to.

Mr. TOZER. I suppose the object is to include every lawyer in the Convention, but I suggest that perhaps it would be as well to strike off half the names already on the list, and put on a few clients instead of attorneys, that the attorneys may be looked after a little. [Merriment.]

The PRESIDENT *pro tem.* If that is a motion, the Chair will have to rule it out of order.

[The PRESIDENT in the Chair.]

Mr. WARWICK moved that the Sergeant-at-Arms be instructed to remove the stove over the hall, in order to promote ventilation.

Mr. FITCH. I move to amend, by instructing the gentleman from Lander to go on the roof, with a paving stone, and proceed, vigorously, to create ventilation. [Laughter.]

The PRESIDENT said that the Sergeant-at-Arms would attend to the ventilation.

The PRESIDENT appointed Mr. Proctor, under the motion just adopted, as an additional member of the Committee on the Judiciary.

The PRESIDENT. The Chair will state that in framing this committee, his object was to place every lawyer in the Convention upon it. I believe, so far as I am advised at least, that that has been accomplished. If such is not the case, the Chair would like to be informed of it, because it is a very important committee, and one which should have the benefit of all the legal talent we have.

Mr. BROSNAN. I hope, however, that if any more lawyers shall be appointed upon the committee, they will be men who will attend to the business of the committee.

The PRESIDENT. The Chair is informed that there is one other legal gentleman in the Convention, Mr. Proctor, of Nye county. If there is no objection, he will also be added to the committee.

Mr. PROCTOR. I hope I shall be excused, as I am already on one committee.

Mr. NOURSE. I think the gentleman from Nye ought to be there, to represent his party. [A laugh.]

Mr. DUNNE. I move that the gentleman from Nye (Mr. Proctor) be added to the Committee on the Judiciary.

The question was taken, and the motion was agreed to.

ADJOURNMENT.

Mr. BROWNAN. I understand, Mr. President, that it is the intention of a good many members of this Convention to adjourn at the close of the noon recess.

Mr. DELONG [in his seat]. That is an amendment to a standing rule. I object.

Mr. BROWNAN. I am about to make a statement, with a view of following it up with a motion. I understand that several members desire an adjournment at noon to-day, until Monday morning, and, for my part, I would like to have such an adjournment take place, in order that the Judiciary Committee may devote this afternoon to the consideration of the Article on the Judiciary Department. I think we will save much time by that course, as it is very difficult to get a majority of the committee together in the evening. If the committee shall meet this afternoon, I think we may be able to get through the Article, so as to report it on Monday. For that reason, I move that at noon to-day the Convention adjourn till Monday morning, at ten o'clock.

Mr. DELONG raised a point of order, that such an adjournment would be in violation of a standing rule of the Convention.

After a long discussion, involving frequent reference to Jefferson's Manual,

The PRESIDENT overruled the point of order.

The question was taken on Mr. Brownan's motion, and upon a division, it was agreed to—ayes, 77; noes, 3.

Mr. DUNNE. I give notice that on Monday I will move for evening sessions, to make up for the time which is to be lost by this adjournment.

The PRESIDENT. No notice is necessary. The motion can be entertained whenever motions are in order.

COMMITTEE OF THE WHOLE.

On motion of Mr. DUNNE, the Convention resolved itself into Committee of the Whole, (the President remaining in the Chair,) for the consideration of the several articles pending before that committee.

CORPORATIONS.

The Committee resumed the consideration of Article VIII, entitled Municipal and other Corporations.

PACIFIC RAILROAD.

The CHAIRMAN. When the Committee was last in session, it had under consideration Section 9 of this article, and to this section two amendments were pending, the first being the amendment offered by the gentleman from Nevada, (Mr. Nourse,) to strike out all after the words "association or corporation," in the third line; and the second, an amendment to that amendment, proposed by the gentleman from Ormsby, (Mr. Lockwood,) to strike out all after, and including the word "provided," in the fifth line. The question is first upon the amendment to the amendment, proposed by the gentleman from Ormsby, (Mr. Lockwood.)

Mr. NOURSE. I am willing to accept the amendment of the gentleman from Ormsby, as I understand that several gentlemen desire me to do so, and I am not, myself, at all strenuous upon that clause. As that is all that separates us, I will accept the amendment.

Mr. HAWLEY. Since the Convention adjourned last evening, Mr. Chairman, I have been approached by several gentlemen, not members of this Convention, as well as by some who are members, with the expression of their views on the subject which is now before the Convention. I gave notice, yesterday, of my desire to say a few words in opposition to the proposition now under consideration; to wit, the amendment of the gentleman from Washoe, as amended by the gentleman from Ormsby.

In the first place, sir, I will say that there seems to be, in the minds not only of those gentlemen who are not members of this Convention, who have conversed with me on the subject, but also in the minds of gentlemen who are members, and who support this proposition, a mistaken idea. Now I have to say, as to the character of the provision of this section of the Constitution which was adopted at a former Convention, that it seems to be a settled determination on the part of certain gentlemen to construe that section into a peremptory order, on the part of the Convention, to the Legislature of the new State, to issue the bonds proposed, or authorized to be issued, whether or not they desire to do so, or are desired to do so by the people of this Territory, or of this State, as I trust it is about to become. It seems to be the determination of certain gentlemen to impress the public mind with that view of the question. They seem determined—and I say it with all respect to those gentlemen—that the public mind, so far as they are concerned at least, shall not be disabused in those premises. Now, sir, if the views of the members of this Convention are to go abroad, if our opinions are to be at all considered in the community, I desire, for one, at least, to be fully understood upon this question. I do not desire, at this day, to be considered as far behind the spirit of the age—to be regarded as lagging so far behind the march of improvement and of intellect, if I may be allowed the expression, as to be opposed to permitting the loan of the credit of the State to an enterprise of such great public importance as the construction of the Pacific Railroad.

First, then, with the permission of the Committee, I propose, briefly, to call the attention of the Convention, and, if my views should obtain any publicity, the attention of the people of the Territory, who are to be called upon to vote upon this instrument, to the character of the section as it was formerly adopted, and, in

I trust it will be sustained by this Convention. Why, we are not here to legislate; we are here to recommend, and to provide rules for the guidance of those who are to legislate. Nothing I could say in regard to this section could add any force to the simple recital of its provisions. The proviso which it is now proposed to strike out, reads as follows:

"Provided, that this state shall hold bonds or an amount in the Legislature may prescribe, on such terms as the Legislature may prescribe, to the payment of which first and before a preference to the State for redeeming this issue, with the particular consent of Congress, or with the express consent of the United States, shall have; but no law to issue bonds shall be effective, unless sanctioned by a vote of the people."

First, then, this proviso does not prescribe any positive rule, but merely recommends a course of action. It places in the hands of the Legislature the power to issue these bonds; and, sir, I ask whether that body, about to convene, as I trust, coming fresh from the people, and representing their views fully, will not be competent to decide in accordance with the will of the people, in this respect. The simple statement of fact does away with that objection which has been urged, more in private conversation, perhaps, than in debate here—more by private individuals than by the members of this Convention. Now, sir, when this proposition is fairly understood by the people, I believe scarcely a dissenting voice will be raised against the adoption of such a provision in our proposed Constitution.

Again, sir, it is and has been contended that the terms of this provision will authorize the Legislature to issue these bonds and deliver them at once to the parties contracting, and that the money so raised by the issuing of those bonds can be expended outside of the borders of the State, not a dollar of it inuring to the benefit of the people of this State. The plain terms of the proposition, as contained in the section under consideration, does away with that objection, because it prescribes, in unmistakable language, which not all the ingenuity of the logician, or the aspiring efforts of any special pleader, can misconstrue, that not a dollar of that money shall be paid, nor one of those bonds issued, nor one dollar of the funds appropriated, until the railroad to be constructed shall be so far completed as to connect with this State—until such railroad, running from navigable waters, shall reach the boundary line of the State which is now about to be formed.

Now, sir, with all deference to gentlemen, I wish to say that another proposition has been raised in this connection which is calculated to mislead the public mind—another objection which is urged in opposition to the measure now before us. Let the Legislature act upon the recommendation of the Convention; let that body avail itself of the provisions of this section, and what does it amount to? If the people of this State, about to be formed, shall, when the Legislature have passed this act, be of opinion that it is unnecessary to lend any aid to this great measure, or that it can be carried through without the State aid—that the people of Nevada are under no obligations to take part in the great drama which is now playing, then, sir, the question being submitted to them, they, by their action, can render the action of the Legislature nugatory and void. Not one dollar can pass from the pockets of the tax-payers to the State, and thence to this railroad enterprise; not to the extent of one dollar can the aid of the State be pledged to the consummation proposed—the most momentous, with the single exception of restoring the nation to the rights and dignities which it formerly enjoyed, that has ever occupied the attention of the American people—without the consent of the people of the new State, solemnly recorded at the ballot-box.

So much for the objections urged to the passage of this provision. Now, sir, the question naturally follows, here we say interest in the great cause at stake? Does it become us as intelligent men, as men wedded to the ideas of the advancement of the republic to that pinnacle of greatness and glory which God and nature intended it to occupy, from the time our fathers first labored for the establishment of free principles, to play any part in this great drama, or to take any step towards the completion of that grand design; to do anything to aid the Government in placing itself upon a firm basis? Why, sir, while we are sitting here halting and hesitating about the part we are to perform, while we are counting the cost of what little we propose to do, the Government of the United States is involved in a war, the like of which, and no parallel to which, is to be found in history—it is daily called upon to meet expenses, the amount of which has found no parallel in all the past, in the administration of Governmental affairs. And yet, while the Government of the United States is thus engaged, it still finds time to pause, and to give new force and effect to the enactments already made for our benefit, for the construction of this great enterprise—not only to sanction what has heretofore been done, but even to go a step farther. I find in the latest news from the east, a dispatch which reads in this wise—I read from the San Francisco *Bulletin*:—

"WASHINGTON, July 4, 186—.

"*To Leland Stanford*:—Railroad bill passed. It gives one year more on first fifty miles, twenty-five miles thereafter further is removed. No percentage is to be kept back. Gives double amount of land. Allows a first mortgage on the road of equal amount to the Government, making the Government mortgage second. Old law regarding bond as before. I was not able to do anything for the road between Sacramento and San Francisco.

"C. P. HUNTINGTON."

Here, then, the Congress of the United States is extending new aid to this great project. The men who hold in their hands the destinies of this nation, more thoroughly acquainted with the interest of our national affairs than we can be here, and fully advised of their duty to their country, are giving liberally, holding back nothing

...ing; and they call upon us, by virtue of their enactments, to second them in their endeavors to provide for its early completion. Shall we hesitate, then, for the mere consideration of three millions of dollars?

Let us take into consideration the amount of money which we may be called upon to pay. Look at the early history of this Territory. Why, sir, I can remember when, where now are seen overarching with plenty, and bountiful and substantial residences which are a credit to the Territory, and will be a credit to the new State, nothing was to be seen but the hut of the Indian, and wild cattle roaming over unfenced lands. Let us examine, and endeavor to ascertain by what means this great change has been produced. Have such results been achieved by men sitting supinely down, and counting up the cost of the works of internal improvement which are now built, or approaching completion? Let the man answer who have constructed those roads now connecting us with the State of California, by means of which our taxable property has been increased from a few thousand to twenty-five millions of dollars, in only four years. What would have been our condition, if those roads had never been built? The proposition cannot be disputed, for one moment, that it is by means of these enterprises that, within this very short period of time, our Territory has jumped, so to speak, in a condition of prosperity, with a rapidity of growth and development which, with the single exception, perhaps, of California, finds no parallel in the progress of any State or Territory of the United States, or of any State that ever has been in the American Union. Consider the progress of the past; consider the fact that from a few thousand dollars' worth of property, in our Territory, a few years ago, the taxable property of the Territory, exclusive of the hundreds of millions now actually within our limits, invested in the mining interest, has risen to no amount of over twenty-five millions of dollars, and then can we doubt that by this project of a railroad, connecting us with navigable waters, shall be pushed to completion, during the next four years the taxable property of the State will be increased from twenty-five millions to at least one hundred millions of dollars? Such being the prospect before us, I ask, in these wonder, how can gentlemen hesitate to lend the sanction of their votes to this provision, hedged around as it is in by every possible safeguard, which will prevent any action of the Legislature, unless first instructed and afterwards sanctioned by the people? If we were to rush blindly into expenditures, without consulting the future; if, without the direct sanction of the people, we were to pledge their faith to the payment of vast sums of money, then it might be urged, with some plausibility, that we were overstepping the bounds of prudence. But we are committing no such act, and no such charge can be brought against us. Taking everything into consideration, therefore, I urge gentlemen to withdraw their objections, and let us go before the people free from the imputation that must otherwise rest upon us that we are afraid or unwilling to play our part, or to perform our duty in the drama now enacting before the country.

Every intelligent man knows that at this time our relations with foreign governments are complicated. Every man knows the treacherous double-dealing with which, day after day, the fulminations that has characterized the Federal Government has been met, and the insolence and outrage which have been heaped upon our Government by titled despots, who have no other right to the positions they occupy than that right which might gives. And we know not the day nor the hour, sir, when this Government may become involved in a quarrel which will call every man within the sound of my voice, and every man upon the Pacific coast, to arms. That day may be in the immediate future, or it may be remote, but, as firmly as I believe that I exist to-day, do I believe that there is no hope of escaping the final arbitrament of arms. I believe that that doctrine which was asserted by one of our earliest Presidents must be maintained, and that, sooner or later, we must be called upon to sweep from the shores of the American continent the usurper and despot. I ask, in view of that contingency, whether or not it becomes us to give aid to a measure which will strengthen our hands, and give force to our arms; a measure which gives us the power and the strength to assert our right to control the affairs of the American continent, as against European despotism?

This provision of our Constitution has received my serious consideration since I became aware of the fact that I was entitled to occupy a seat in this Convention. I have prepared a large number of statistical references which I had intended to use, if the occasion ever presented itself here; but taking into consideration all the facts as they presented themselves, I believed that not a voice would be raised against this measure, and therefore I failed to bring with me the statistics which I had prepared. But I will state this, that in my own experience in the Eastern States, I have known communities which had become paralyzed and crushed to the earth by the stagnation of business, and which have been suddenly raised to a state of animation and a pinnacle of prosperity altogether beyond the expectations or hopes of the most sanguine, by such enterprises as that to which it is here proposed we should give our aid and countenance. It is unnecessary to enlarge upon this fact. It is perhaps useless to point to the State of Georgia, which, before the rebellion, claimed the proud preëminence of the Empire State of the South. But what was it that raised her to that position? What, but the liberal aid which the State Government gave to measures of this

cent? What was it which raised the port of Memphis in a few years, from a mere landing-place, whereon perhaps four hundred bales of cotton were expected in a year, to a great commercial city of thirty or forty thousand inhabitants before this rebellion commenced? What was it but the system of internal improvements inaugurated by the State of Tennessee, and properly regulated and sanctioned by the people? Look at the State of Illinois, and New York, also. I do not believe it is necessary to go behind the arguments of the gentleman from Wabash, (Mr. Nourse,) and attempt to show their fallacy, for I think the Convention will bear me out in saying that the sentiments are so enunciated.

Now, sir, I have made these remarks, not so much with the hope of influencing the votes of members of this Convention, as in order to put myself fairly on the record as being utterly opposed to the illiberal spirit which, as I conceive—and I say it with all respect to the gentleman from Wabash, (Mr. Nourse), and the gentleman from Ormsby, (Mr. Johnson), and the other gentlemen who have given expression to their views—would dictate the adoption of the amendment striking out this proviso. Let us adopt the more liberal policy, and shaking off the trammels which have bound us, let us emerge from a state of territorial dependence into the full enjoyment of the dignity of a progressive State. Let us adopt this liberal policy, that we may spring fully armed and accoutred into the Union. Born amidst the fury of war, into a nation baptized by fire, and regenerated by the blood of innumerable patriots, resting in the honored graves of the glorious dead, we shall fringe the borders of the republic with a hesperian light that will be hailed in the future as a proper adornment of that glory which, through all time, shall encircle our country's name.

Mr. HOVEY. Is an amendment in order at this time?

The CHAIRMAN. The amendment of the gentleman from Ormsby, (Mr. Lockwood,) having been accepted, an amendment is in order.

Mr. HOVEY. I move to amend the portion proposed to be stricken out, by striking out the words, "to the company that shall first complete a railroad to the State line," and inserting, in lieu thereof, the words, "to some railroad to be built," so as to read, "on such terms as the Legislature may prescribe to some railroad to be built connecting this State with the navigable waters of California," &c.

Mr. DeLONG. I would like to inquire if the Sacramento River is a navigable stream. I believe there is no water in it now, of any account, according to the newspapers.

Mr. WARWICK. I would like to have the gentleman from Storey (Mr. Hovey) explain how much and wherein his amendment alters the original section.

Mr. HOVEY. I will endeavor to explain it. My reason for offering the amendment is this. The way the proviso is worded now, if we adopt the old section, it prevents our expending money in crossing the Sierra Nevada Mountains, while the people by their vote may decide to do so, which they are not prohibited from doing. As it reads now we are prevented from expending money outside of the limits of the State, and my amendment is to obviate that difficulty.

Mr. WARWICK. When I spoke on this subject yesterday afternoon I had no intention of referring to it again, scarcely dreaming, from the manner in which the section was framed, that it would meet with opposition from any respectable portion, as regards numbers, of this Convention. Now let us look calmly and dispassionately at the section as it stands, and see what it proposes. In the first place, sir, the proviso simply proposes to leave to the people, and the State Government that is to be, I hope, the question whether they will or will not lend their aid to one of the greatest national enterprises that has ever been undertaken by any people. It is an enterprise undertaken, not for the benefit of the State of California, not for the benefit of our constituents, but for the development of the State of which we ourselves are citizens, and whose glory we hope to see perpetuated. Not this narrow and selfish policy should prevail here, which demands that every dollar of this appropriation shall be laid out in our own borders, but a far-seeing, more statesmanlike view, as to what that appropriation should be, looking not only to the present but to the future.

Let us in the first place inquire how much the appropriation which we seek to authorize will benefit our people here at home, in the developing of the Territory or the State, of which we are citizens. Suppose we had in our midst a mountain of gold, or a mountain of silver, still if there were no means of connecting ourselves with the outside world, it would be a burden, or the dirt which we tread under foot. It is only by the facilities which commerce lends, only by the connection which we have with the world abroad, that our gold and silver become valuable commodities. A case directly in point has recently awakened my mind more particularly to the necessity of some action on this important subject. Living as we do outside of the great world, and relying almost entirely upon ourselves, or paying most onerous charges for such communication as we are compelled to have. I had occasion, not long ago, to converse with a gentleman, a resident of Ormsby County—one of our mill owners. Some rock had been sent to be crushed at his mill, and—I refer to this only to show the necessity of some means of communicating with the outside world, in order to render valuable what is now altogether worthless—I asked him what the result of the crushing was. I felt anxious about it, because the rock came from the district of Aurora, in which I belong. He told me that the rock was worthless. I told I was astonished at that, for before I had seen that rock repeatedly taken

and the silver annually coming from it. "But," said he, "it only pays one hundred dollars a ton; and what is that?" Now, sir, think of it! Those ore, thousands of tons of that rock—enough to make a nation of millionaires—yet "it only pays a hundred dollars, and what is that?" It is worthless in our midst. Why? Because we are shut out from the world, with no means of communication to render it valuable, locked up as we are, with every article of living at starvation prices. Flour sells in that district at twenty dollars per hundred, and every thing we eat has to pay a freight-tax of from sixteen to twenty-five cents a pound. Therefore it is that rock which only pays one hundred dollars a ton cannot be worked. All these things come home to us in that far-off county of Lander, and we look anxiously for the day when the completion of this great national work will not only connect us by links of iron with you in this more favored portion of the Territory, and with the State of California, but also with all our eastern borders. Therefore I say that it is an illiberal policy which will not allow the people—not foist upon them, but allow them—if they see fit, to subscribe to this railroad.

But gentlemen, speaking here in their wisdom, tell us that this appropriation should be refunded. One far-seeing gentleman, brought up in Minnesota, which was ruined by banks—brought up in Minnesota, ruined by railroads; in Minnesota, ruined in every conceivable way, and on the brink of repudiation on account of bonds on which she never paid a cent of interest—tells us that this appropriation would ruin the State of Nevada. Why, sir, there is scarcely any provision in this Constitution thus far brought before the Convention, but what, according to that gentleman, it has been the ruin of Minnesota. [Merriment.] Now, sir, I have had the honor of living in another State almost as great as Minnesota. I came, like the President of our Convention, from the State of Illinois, and I became a citizen of that State when there was not a mile of railroad in it. It was then scarcely inhabited, poor and feeble; but it has become a grand and mighty State whose sons to-day are gathered by hundreds and by thousands upon every battle-field, defending the life of the Republic. Those then desolate prairies have since that time been populated and converted into fruitful fields. And what have not railroads done for that State built up in the wilderness? They have given her an impetus on the road to prosperity which she never would have obtained without them. They have caused cities to spring up with hundreds of thousands of inhabitants, and population to be poured into every county and town. The State has been developed as if touched by the magic wand of an enchanter. The increase of the population of that State has been as wonderful as our own, and the growth of her cities has never been a parallel in the United States. I went to the city of Chicago in 1849, when the population only amounted to about 23,500 people; but, five years ago, the population of that city had swelled to over 100,000 people. Think of it, gentlemen. An increase in population of three hundred per cent. in the short space of ten years! And not only such an increase of population, but a vast increase of the wealth of the State; and all, or mainly, attributable to the beneficial results of railroads. That is what has made Illinois not only the granary of the United States, but in a very great measure the granary of Europe also. The exports of wheat and other grain from the State of Illinois have materially contributed to the wealth and prosperity of the United States. They have made that State, simply by the influence of railroad communication along, one of the foremost States of the Union. These facts are demonstrable by the experience and observation of every gentleman on the floor of this Convention who has taken the pains to examine the question at all.

Reference has been made also to the State of New York. Now what did New York do? The State of New York loaned her credit to the New York and Erie Railroad, and some gentleman, I think, in his allusions to the railroad system of New York, has asserted or inferred that the result of that loan was disastrous. Now, sir, I would inquire of the gentleman who made that assertion if he has ever traveled from Lake Erie down to the mouth of the Hudson, that river which is celebrated as the most beautiful in America? I have done so, and I know that along that whole route, which twenty-five years ago was almost a howling wilderness, there are beautiful cities and populous towns, which have sprung up in consequence of this railroad communication. That region has, by this means, become not only a center of agriculture, but an emporium of manufacture, and that portion of the State of New York has been rendered not only the most beautiful but the most productive region within the limits of that State.

There is another consideration, which is worthy of our attention. The American people, above all others, I believe, on the earth, place great value upon time. We commence life in a hurry, and we hurry right through life, until the dark angel hurriedly gathers us to the tomb, when our race is ended, and our task is done. Now, I start from my home in Lander County, and, with the utmost possible diligence, I consume two days and a-half, and expend a hundred dollars, in order to reach this Convention. But, how would it be if we had railroad communication? I could leave my home, in Lander County, in the morning, having taken breakfast at home, and if the Convention were in session in Carson, I could sit in your midst at high noon, saving thereby one day and a-half of time. Now, one day and a-half saved to each individual, where there are thousands who are traveling in the community, is an important item in the brief span of life of the whole community. And it is all the more important when a person is approaching the end of the

time, when a day or an hour becomes immensely valuable. We have to think of that fact, in comparison with the small amount which this proposed debt will cost for each individual in the community.

Another thing: these gentlemen cling to the old-time usages. They are afraid to let the people of Nevada say for themselves whether they shall have this great highway or not. Look at our highways now, infested with robbers at every turn; not that I fear them personally, however, for reasons which my modesty forbids me to name. [Laughter.] I have looked at this question carefully, and I am at a loss to conceive what these gentlemen would require. This provision is carefully guarded. No law can take effect under it, unless first sanctioned by a direct vote of the people. It says:—

"Provided, That the State may issue bonds to an amount not exceeding three million dollars, on such terms as the Legislature may prescribe, to the company that shall first commence a railroad to the State line connecting this State with the navigable waters of California, or with the navigable waters of the Mississippi river; but no law to issue bonds shall be effective, unless sanctioned by a vote of the people."

It is this concluding clause that prevents any waste, or any lavish expenditure, and that is the clause that obviates every reasonable objection. It is not that we fling it upon the people, and that we say the Legislature shall do so and so; but we say to the people of Nevada that if they themselves will it, then they shall have the power to enact it in this particular case—and why? That the State may be developed, and that we may take that stand which we ought to take, as one of the foremost States of this Union.

The gentleman from Washoe (Mr. Nourse) referred yesterday to the case of Minnesota, but there is a practical difference in our case. Minnesota is an agricultural State, and between her and the great waters are a great many other agricultural communities, which could undersell her in any of the markets of the world because of her greater distance from them. She could not compete with the State of Illinois or Iowa, or with others closely connected by a railroad system with the great lakes and rivers which are navigable to the sea. But that is not our position. We have wealth within our boundaries with which no other State can compete. If this clause were to bind the people of the State to vote one single dollar, I should oppose it to the last; but when it comes to saying to them, "You may, or you may not," the case is different. Now, sir, in any case where it is proposed to make an appropriation promising a sufficient return, or sufficient of national good, I am ever ready to cast my vote for it, and I sincerely trust that this provision will commend itself to the kindly judgment of every member of this Convention who looks not alone to the present depressed state of affairs, but who, with a more enlarged vision, a more high and hopeful forecast for the future, looks forward to the day when these wastes now barren, these wilds now unpeopled, shall teem with a population of millions, when we shall be able to send not only silver and gold, but, I need be, our blood—our hearts' blood, coined into freedom—to be offered for the defence of the flag. Not for to-day, or for to-morrow, but for the future, when the voice of every member of this Convention shall have become silent, when all who hear me now shall have returned to ashes and dust,—then, sir, I hope, shall the State of Nevada continue to be one of the resplendent parts of a great, united, free country, and the great railroad tie which shall bind our brethren of the east with our brethren of the west, shall remain as an enduring monument of the wisdom of the people who have called us together here. And a great and mighty people shall in their wisdom long continue to sanction and applaud the measure which I now have the honor to advocate.

Mr. DELONG. With much that was said by the gentleman who has last spoken I fully agree, for the reason that it accords, in my judgment, with the results of the observations and investigations of every thinking man. California, our sister State, started out fifteen years ago in the race of empire, attended by the most glowing promises of a glorious future that any young State ever had before it. It had an unparalleled wealth of agricultural soil, mineral possessions claimed to be unsurpassed, and a population composed of people drawn from every quarter of the globe, representing the enterprise, the intelligence, the industry, and the bravery of all the nations on the earth. It had a seaboard which promised to unite the commerce of the Indies with America, if not with the entire globe. With all these advantages held out before her, California, I say, started upon the race of empire a few years since, with the most glowing promise and prospect of a brilliant future unfolding before her. Yet, strange to relate, to-day she is the poorest State in the Union—without credit at home or abroad, with more poor men in her midst, with less of public improvements, with less of all of which a State may well feel proud, than any other State in all the sisterhood of States within this Union. This Territory starts apparently in the same way. With an unparalleled, unprecedented, almost undreamed-of wealth of mineral resources, with whole mountains and vast caverns of mineral wealth, we see her at this early day, before she has fairly started in the race of empire, halting and hesitating whether or not to become a State, fearing that her resources are insufficient to sustain her in that exalted position. Why are these things so? When we see such strange effects, we should naturally look for the cause. I agree with gentlemen who have preceded me, that the reason is, the want of internal improvements. I say it is remarkable that these people, with all their enterprise and wealth and energy, should sit here in the sun, and upon the sand, and starve almost, while

gold here at their homes are untold wealths of silver in their mines, but all lying idle because these mines cannot be developed for want of internal improvements. The Comstock lead is being worked, it is true, for little blue sulphurets; but the rock that will not yield twenty-five dollars per ton, at least, has to be cast aside and condemned as utterly worthless ore, because we lack the wood and the water-power to reduce it. We have to haul wood now from the Sierras with mule teams, at a cost of twenty to twenty-five dollars per cord, to crush rock by steam-power, and if the rock will not pay more than twenty-five dollars a ton it will not yield any profit beyond the cost of working, and consequently is worthless and waste. The same thing is more plainly exemplified in Lander County, as has been shown by the member from that county. It is situated in a belt of mineral region extending from Mexico in the South to the British possessions in the North, hundreds of miles in width, and of untold richness, yet almost wholly undeveloped for the want of connection with these mountains where water-power may be had in abundance, and where there is a boundless wealth of timber. These two great requisites, which only are necessary to make our Territory a great State, can all be obtained in abundance by a railroad connection.

But when I go that far, and when I agree with the gentleman from Douglas, (Mr. Hawley,) that the difficulty in the way of our progress is the want of internal improvements—that it is that want which has caused those States of California, which started with such glowing promise, to lie drying up and withering upon her plains to-day—for I think it cannot be disputed that their want of prosperity is attributable to the lack of internal improvements—yet, it seems to me, I must disagree with him in his views as to the manner of supplying that want. He asks that it may be done by means of State aid. Now, I will say that only a few years ago I was equally as enthusiastic in support of the idea that such desirable results could and should be accomplished by that means, and I labored, in the halls of legislation in California, with all the earnest zeal and ability I possessed, to secure the aid of that State to railroad enterprises in the northern part of the State. We succeeded in getting a bill through, granting State aid to the Vallejo and Marysville Railroad Company, giving the company alternate sections of land along its line, for the purpose of building that road, and granting them five years time in which to complete it—granting them, in fact, all the privileges and concessions which they asked at the hands of the Legislature. But that road was never built. Although the free gifts of the State were sufficient, in the judgment of every business man, in themselves to have paid for the building of the road, if it had been constructed by the enterprise of private parties or corporations, yet no part of it was ever constructed. Why was it not built? It was not because the State refused its aid, but it was because the rates of interest on money were so high that men who had money could not be induced to invest in railroad enterprises. When we went to the capitalists with the scheme of that Vallejo and Marysville Railroad Company, when we went to San Francisco, and laid the statistics before the money-lenders, asking them to embark in that scheme, and help us to build that road, which would connect California and Oregon with ties of iron, and make San Francisco a great metropolis, what was their reply? In such a case the capitalist hears you very patiently, admits all you have to urge, and then says you must first show him how your road will pay two per cent. per month at the start, and a fair margin for an increase. And this, too, when capital is invested freely in Europe, and in the Eastern States, with no margin for an increase at all, at six, seven, and never over ten per cent. per annum, and investments of that kind are greedily sought for. But here, you cannot get capitalists to go into any enterprise, unless it promises two per cent. per month. What was the reply of the money-lender when we approached him, and sought to gain his assistance in that undertaking? He turned to us and said, "My friends, you are foolish to expect me to invest my money in enterprises which promise to pay but two per cent. per month, when I can loan my money at three per cent. a month, and secured, too, by bond and mortgage on property in San Francisco." Go to men who have capital to-day in Virginia City—men who might command almost the entire wealth of San Francisco—and ask them to build a little canal in these mountains, where water-power, and wood, in inexhaustible quantities, is to be found, and show them, as we can, and have shown them, how they could carry water and wood enough to supply the State through that little canal, and that the work promises to pay two, and even three per cent. per month, with the best security in the world, and what do they say? The answer is, "I can loan my money on bond and mortgage in the city of Virginia for five, six, and sometimes even eight per cent. per month, and am I going to embark in a kind of enterprise which promises to pay only two or three per cent?" No, sir; they do not refuse to embark in these things because of any doubt sought to be thrown around our own enterprises, or around enterprises in California, but because they can make a more profitable use of their money. And they will not be any more ready or willing to embark in them because the aid of the State may be given to those enterprises. You must reach and remedy the evil, by a blow struck in another direction. You must accomplish that result, by doing away with that clause in this Constitution, and in that of California, which has chained the industry and enterprise of our citizens, and brought them down to their present

[illegible] position—that clause which gives to us an exclusive gold and silver currency. Why, sir, there is not a nation on the face of the earth, outside of this people on the Pacific coast, which, if we were to draw from them everything in the shape of money except their gold and silver, would have left a dollar unless for all the inhabitants. England would not have it, nor any nation of Europe; and there is not a nation or a State on the globe, outside of California, and Oregon, and this Territory, that would have it. And what would be the result in other communities, if they were suddenly reduced to a specie currency? Why, sir, enterprise, business, industry, internal improvements—everything would be forced to stand still. The interest on money would be enhanced beyond all bounds, and not a railroad or a canal would be built. I say, then, reach the difficulty, and apply the remedy, in another direction.

You cannot encourage and assist these great enterprises by appropriations of this character. Even three millions of dollars is but a drop in the bucket in the building of that road, and when you reduce that amount down to less than one million, as I contend this, in effect, would be reduced, because we have already limited the interest to seven per cent., which is a beggarly rate of interest here, it will be of no perceptible advantage whatever, to the enterprise. Men in this country would not buy those bonds. They will not be such fools as to invest in seven per cent. State bonds, when they can get three or four times as much for the use of their money; and we shall, therefore, be compelled to seek Eastern capital. And then what would be the result? Why, your own people, although really lending no substantial aid to the railroad, would, nevertheless, be obliged to assume the responsibility of paying this interest. That burden would come upon your State, upon the back of the current expenses every year. We do not wish to be called upon to pay the interest upon bonds to that amount, unless, in some way, we derive a corresponding benefit. I do not believe the bonds would ever sell for more than fifty cents on the dollar, payable in greenbacks, in New York, and yet the State of Nevada would have to pay the interest on the entire amount of the bonds, amounting to several hundred thousand dollars a year. I say the loss to the people is too great to be compensated by the hope of advantages held out in the anticipation of this road getting here a little sooner.

Now there are two railroad enterprises which have been fostered by the General Government. They are rivalling each other, and both striving might and main to reach the border of our new State, not for the sake of any premium which we are expected to hold out, but for the sake of securing their own support by the people of Nevada, as well as the support of the people where those roads are building. Let them go on and run their lines across the country, and across the mountains, just as fast as it is possible for them to do so; and they will have them no faster, sir, in consequence of any aid which we here can bestow. They will work just as hard without it, and then you save to Nevada the three millions of dollars with which you are now asked to saddle her in her infancy. You can hasten these roads more, as I have already said, by striking a blow in another direction—by giving us some currency other than coin. The moment you do that—I do not care whether you give us greenbacks or banking institutions—you make the country rich and prosperous, because you reduce the rate of interest, and force money into the market, to be loaned at so much per month, to be used in the building of railroads and canals, and all sorts of public improvements, in addition to the opening and developing of our mines. That is the way to reach and to remedy the evil—by striking a blow at this infernal cent-per-cent.

This is a subject upon which we ought to get wisdom by our knowledge of California—by our experience as citizens and as pioneers there. That experience tells us that the men who laid the foundations of that State; the men who prepared the foundations upon which to build up a great and magnificent State; the men who opened the roads to the mountains and brought water from the streams to the placers; the men who built her cities, who prepared and improved her farms; those men, the early and adventurous California pioneers, have generally gone from our midst, or are beggars or paupers to-day. And who is it, I ask, that has reaped the reward of their toil? Who are they who are living in the fine houses which those men reared to be the homes of their families? They are these three-per-cent. money-brokers—the men who crawl into their little narrow dens ten feet by twelve; men who never built a house themselves, and never employed a laborer; men who never did anything to develop the country, except to make other people pay two and three per cent. per month for the use of their money. They have loaned their money in that way, and have rolled it over and over, gobbling up everything, until the poor pioneer was stripped of all he had, turning it over to these drivers of hard bargains. Many of that class of men have found their way here, and are now driving the same hard bargains throughout our Territory, and playing exactly the same role. Are we to place ourselves in the hands of those men? I say give us a different fate from that. Let us adopt what all the world, except California, has decided to be the part of wisdom to adopt, and that is a paper currency. Let us allow these paper evidences, or representatives of currency and value, to circulate, and then a few men who have happened to get hold of all the gold and silver in the land will not be able to play into each others' hands in such a way as to crush down any and every man whom they may choose to crush.

they or three men in San Francisco have [illegible] and the State in their power ever since [illegible] was a State. And Nevada Territory, with all her enterprising merchants and business men, is equally in the power of those men who have here to crush and ruin business at any moment they please. And I believe they are running us even now. They go to work on a more elaborate system. They allow a man to pledge his stocks in the banks, and then to have about twenty per cent. as a loan secured by his stocks in the mines. They continue that very liberal system until every man whose connection being him within their power is complete, and every man's stock pledged, and then, by a secret combination and understanding, they shut down, and every one of their victims is forced to go into Montgomery street with his stock. Once they get the stock into the market, these men gobble it up, as they did the farms and the big stores and warehouses, and other property in California. That is what is going on all the time, and it is the natural result of an exclusive gold and silver currency. If we want railroads, if we want these men to come out with their money and make investments in railroads and other enterprises, we must have other representatives of value to serve instead of gold and silver as a medium of exchange. Then we shall appreciate and enjoy the full value of the home article, for the production of which men are toiling and exhausting their bodily strength here in our midst.

Now the idea of submitting the proposition to grant aid to the people, is no doubt a very good thing on the stump, when we are going to talk about it before the people. It is all very fine on paper. Why, sir, that clause providing for submitting to the people of the State the question, whether or not they will vote this three millions of dollars, at the time of election would be so far lost sight of that you could get fifty men to vote for it on condition that fifty others would agree to vote for a favorite candidate for constable. If every political party would, by agreement, put "Railroad Contribution—Yes," on their tickets, then it would be universally voted for, and scarcely anybody would notice it during the election; and if, on the other hand, by a like agreement, they put "Railroad Contribution—No," on their tickets, then it would be as universally voted down. People, in the time of an excited election, would pay no attention to such a matter. It is not that which people get excited about. The burden falls lightly upon each one, and the voter thinks but little about it, or if he thinks at all, his reflection is, that what he pays is but a trifle, not worth minding; consequently there is no strife on the subject. The strife is only for the success of the party, or the election of favorite candidates. I say, then, that this talk about submitting it to the people is all humbug and bosh, because the people will not pay attention to it at a general election. If you wish to obtain a fair vote upon that proposition, provide in your Constitution that it shall be submitted as a separate question, at a time when men's minds are not excited over a general election, or about the success of this or that officer to be elected; and then, by their votes, the people will show their honest sentiments on that question, because they will vote with their attention already called to it, and with nothing to distract such attention. It strikes me that we should act willingly and knowingly, with the lessons of the past before us, and the knowledge that these railroad companies will do all they can to carry such a proposition before the people, trust the decision of the question to the hazard of a general election, at which other important issues must be decided. It is a fact which gentlemen must recognize, that these companies will labor assiduously, because they will have a great interest at stake, while it is nobody's business in particular to oppose them.

It is said that this appropriation will hasten the building of the road, but I do not think so. They are building the road now as fast as they can build it, and they could not hurry it at the present time, no matter how much money might be at their command, for the simple reason that they cannot, for love nor money, obtain rolling-stock fast enough. There is a lack of that material, owing to the necessities of the Government; it cannot be furnished fast enough. Railroads are building and have been built throughout the South for our military lines. The cost of rolling-stock is therefore very heavy, but these railroads are buying it up at any cost, when it can be had, and shipping it out here. They cannot do it any faster than they are doing it, and in my opinion, we shall have the railroad here just as quick without this constitutional proviso as we shall with it.

Now, sir, I would vote in favor of a provision granting aid to this railroad in one way, and that is, to provide that this money shall be taken and used to commence a section of the proposed line of road, on either of these routes across the mountains, and complete it as far as the money would carry it, on that proposed line, within this State. I would go for that most heartily, because that would help us some, while I insist upon it that this provision would not help us at all, but, on the other hand, that it would crush the State down into absolute bankruptcy. It will subject us to enormous taxation in order to pay this interest of two hundred thousand dollars a year. Where do gentlemen expect this money is to come from? Let them figure a little on our ways and means. We shall have to pay the salaries of our judges and other officers of State, and we shall have to pay the current expenses of the State, and you may add to that twenty-five thousand dollars a year as interest on our public debt already accrued. Then if you issue three bonds, you depreciate your State scrip, and start off

an easy career of State prosperity with only at twenty-five or thirty cents on the dollar, and not taken at that, except by those officers who are obliged to take it in lieu of money. I say it would destroy us as a State, and I am willing to run any risks there may be of being called an old fogy on account of my opposition to this measure.

But I am not opposed to the construction of the railroad. No man in the world lives or breathes who can say that he has a more glowing hope of the grand results to follow in the future, from the construction of a railroad across the mountains, than I have. I regard it as an achievement which should be sought after and labored for by every man who loves his country and hopes for its prosperity. It is the great want of our State. It is what will give us unbounded prosperity, and therefore I am in favor of it; but I say that this loan will not aid it in the least, while it will ruin us in the effort to pay it.

Mr. COLLINS. I certainly should not have risen to make any remarks upon this question, but for the very ingenious speech of my friend, the gentleman from Washoe, (Mr. Nourse,) and the very enthusiastic remarks of my colleague from Storey (Mr. DeLong.) I do think, however much the gentleman who last spoke applauds this great movement for the construction of the Pacific Railroad, which is to unite the two great oceans of the globe, however much he thinks we ought to endeavor to use our influence in behalf of that enterprise, he is opposed, practically, to our exercising any such influence in its behalf.

Mr. DeLONG (in his seat). Oh, no, I am not.

Mr. COLLINS. Now, all that the gentleman from Washoe (Mr. Nourse) said in regard to railroads in Minnesota may be true, and there may be reasons why it should be true, though to a certain extent I doubt their applicability to our own case. There may be reasons why people in various parts of the country have suffered on account of railroads. I have myself known of hundreds and hundreds of individuals, who, in their enthusiasm, have subscribed to the stocks of railroads, and have been ruined thereby; but I would say to gentlemen of this Convention, that I know of no community where a system of railroads has ever been thoroughly established, which community would consent to exchange those railroads for the amount of money which they cost. Take, for instance, the State of Illinois, and look at the advantages which she has derived from railroads. I grant that subscribers to the stock of those railroads may have suffered much, but the public, as a whole, has derived great benefits from them. Take, also, for another instance, the internal improvements of the State of New York. It is notorious that about the time of the opening of the great Erie Canal, which unites the lakes with the waters of the Hudson River, a little distance from Utica westward, property was comparatively worthless; but the moment the communication was opened, that property acquired great value, and it added immensely, too, to the value of all the property of Ohio, Western Pennsylvania, and Western New York; and what was the immediate result? Why, it gave such immediate and immense advantages to New York, that Pennsylvania was forced, in self-defence, to open a canal between this latter and her own western boundary. And look at the advantages which have been derived from those lines of communication, by New York, Pennsylvania, and the great West. Those public works, of gigantic proportions, at once utilized the idle lands of the western wilderness, opened up improvements, and founded towns and cities so rapidly, that in a short time there was a necessity for more rapid intercommunication between the markets of supply and consumption, and for increased transportation. The Albany and Buffalo, or what is more commonly known now as the New York Central Railroad, was the offspring of this necessity. A similar result followed the construction of the Pennsylvania Canal—the union by iron rails of Philadelphia with the Ohio River, and by that with the great valley of the Ohio. The competition of the Northern route became so great, and property rose to such great value on those lines, that another railroad was contemplated and has been constructed between Dunkirk and the city of Erie, on Lake Erie.

Now, the gentleman from Washoe, (Mr. Nourse,) yesterday told us that the New York and Erie railroad was suspended, or its construction baffled and delayed, in consequence of State aid. I think the gentleman's memory must have failed him on that subject. He may not have designed to convey that idea, possibly, although, certainly, his language did convey it. The managers of that New York and Erie Railroad commenced it with the idea that six years time, and three millions of dollars, were all the time, and all the money, that would be necessary to secure its completion. The stockholders paid their three millions, and it was all absorbed, but the road was but fairly commenced. In consequence of the hard times, nothing further was done until New York appropriated three millions more. That, too, was exhausted without completing the road, and finally, instead of building the road in six years, as was projected in the outset, it required seventeen years, and instead of costing only eight or nine millions, as at first contemplated, it cost the round sum of seventeen millions of dollars. But the road was eventually completed; and I ask the gentleman if New York, and Pennsylvania, and Ohio could be induced to exchange that railroad, or to tear up the rails, and prevent their operation, for twice the cost of the road? I certainly believe they would not. In New York, all the property along that route has risen, since 1850, from fifty to three hundred per cent. in value.

to call the attention of gentlemen to this point. They contend that the railroad will be constructed, whether we give it our aid or not. I have no doubt of it; but the question is whether the offer of an appropriation of three millions will not be a great advantage and assistance, and greatly hasten the completion of the road. Much has been said relative to the impossibility of securing the investment of capital. It is not to be expected that the capital is coming from California, where the percentage is so ruinously high; or from Nevada, where the percentage is still higher. But in proportion as the value of a railroad challenges the attention of the capital of the globe, in the same proportion will the capital of the globe run in the direction of that railroad. The very fact that the Constitution of Nevada gives the Legislature permission to subscribe three millions of dollars to the stock of this railroad, will inspire the capitalists of New York, and all the Eastern States, and the capitalists of Europe, with the idea that there is really value in it.

My colleague has stated that the Vallejo and Sacramento Railroad could not be built. That may be true, but is there any analogy between that road and this? This is something which is in reality a national affair, and something, also, which is absolutely indispensable to our very existence. Nothing can be said like that in relation to the road to which he has referred. As the gentleman from Lander (Mr. Warwick) has said, everything in Nevada, in the way of living, is held at almost starvation prices. We have to pay immense freights and profits on everything we consume. Here we are hemmed in by mountains on the east, and hemmed in by the Sierras on the west, and freights to any part of our Territory range from three to ten cents on the pound, and, at the more remote settlements, Lander, and Humboldt, and Esmeralda, they are very much augmented.

Mr. BRAGNAN (in his seat). From sixteen to twenty-five cents.

Mr. COLLINS. Yes, sir, as much as that. Now, I ask gentlemen if there is not an absolute necessity for this railroad. If those who are managing its construction are pressed for money, is there not a necessity that we should aid them as far as we can? I believe that necessity will exist, for I do not believe that the engineers, or anybody else, can tell within ten millions of dollars what will be the cost of building the line of railroad across the mountains in Nevada, nor do I believe that they can tell within five years, how long it will take to build it. Our warmest hopes are, that it will be built in three years, while some maintain that it will take five, and others, that it will take as many as ten years to get that road through. I remember that when one gentleman was here, some time ago, when the road was first proposed, he wanted to induce me to procure subscriptions to the stock on this side, and said that the road would be built within three years, certainly; but now three years and a half have elapsed, and they have only about twenty-five miles completed. I do not believe the road will be completed for several years to come, because the conformation of the country, and its geological structure between here and California, is comparatively unknown. It is a mere conjecture. They hardly know whether the road is to pass through trap, or talc, or slate, or gravel, or hard blue rock. But the greater the difficulties to be encountered, the more earnest should we be to press the work forward to an early completion, because it is with us a matter of absolute necessity.

I regard this proviso as practically offering a premium, in order to hasten the railroad. Now let us look at the influence naturally and necessarily exerted by premiums. A premium is offered, for instance, by an association, for the best essay on a certain subject, and what is the result? It stimulates hundreds, and perhaps thousands of men, to turn their attention to that particular subject, and before you are aware of it, piles of manuscripts may be accumulated, some of which may be of great value. California, by her Legislature of 1851, offered premiums upon certain agricultural productions, and what has been the result? The farming interest has been stimulated to the rearing of tobacco and cotton, and the other productions for which premiums were offered, and, consequently, new sources of wealth have been developed. They also, at the same time, offered premiums on certain manufactures, and in less than two years, manufactures have come up and received the prizes for all those manufactures, from the hands of the government. I might extend these illustrations indefinitely, but I think sufficient has been already said, to show that a premium will have a tendency to cause men to press on with greater vigor and energy. If, by this means, we can hasten the building of a railroad across the mountains, it is clearly for our interest to do so. As I have intimated, I do not believe that the railroad can or will be brought within our Territory in less than six or eight, or, perhaps, even ten years, and if we can advance it, or shorten the time, as much as one year, that will certainly more than compensate us for this appropriation of three millions of dollars. I have yet to learn, Mr. Chairman, where any system of internal improvements has ever penetrated any section of the country, east or west, north or south, and that section of the country has not been benefited. The real estate, and all other property in such sections of the country, have invariably been increased from twenty-five to fifty or one hundred per cent in value. I refer as illustrations of this universal rule, to the Erie Canal, to the Pennsylvania Canal, to the New York Central Railroad, to the Erie Railroad, and to that railroad which crosses the Green Mountains, and by that route connects Boston with the great West.

And allow me here to refer to one interesting

York. I remember distinctly that after New York had secured the trade of the West by means of her railroads to the Hudson River, down which that trade was carried through-out the year, with the exception of a few months in the winter season, Boston fraternally hoped that westerners at Albany by means of the Western Railroad, and during the winter season managed to carry a share of all New York suffered immensely in consequence, and New York in self-defence had to create a company to open a railroad direct to Albany. And they are employing that railroad successfully at the present day, and thereby preventing themselves against the encroachments of Boston. And I ask if the property all along the line of all those railroads has not been immensely augmented in value in consequence of this construction?

I repeat, therefore, that however much railroads have injured individuals, they have always benefited the public. I do not, for one, pretend to say that this Pacific Railroad is going to fill the pockets of its stock-holders, although it may look very plausible at present. But, even if it ruins the stock-holders, it is nevertheless going to benefit this State and the nation. If the appropriation of three millions of dollars shall prove to be a dead loss to the Territory, so far as the money is concerned, it will nevertheless benefit the Territory in the end, to the extent of perhaps fifty or a hundred millions of dollars.

My colleague from Storey (Mr. DeLong) has told us how much advantage was to be derived from the construction of a railroad that should strike the Sierra Nevadas, running from the more populous portions of our Territory, and reaching the mountains at some point where timber and wood may be had in abundance. I say that simple fact itself should be sufficient to induce us to use all the influence we can to push forward this work in order to bring ourselves in direct communication with the mountains. I presume that millions upon millions of tons of quartz in Storey County are regarded to-day as utterly worthless, which, if such communication were opened, would enrich the miners, and give employment to thousands and tens of thousands of laboring men in this Territory. All they need is to have a railroad to convey it to some point where wood and water are abundant.

And we have other advantages to consider. Look at the enormous expense of freights, amounting, according to some, to six millions, and according to others, to as high as eight or ten millions of dollars a year, and I have heard of some statisticians carrying the estimate up as high as twelve millions per annum. Look, too, at the number of passengers who have crossed the mountains. During the last year, Louis McLane & Co's Pioneer Line have carried [illegible] thousand passengers from Nevada to Sacramento. That is nearly $450,000 for that company alone.

Mr. GIBSON. Their profits last year amounted to over $400,000.

Mr. COLLINS. I have no doubt of it whatever. Now let us look at the other side. Besides the almost rate at which quartz can be conveyed to the mills, and the reduction in the cost of freights and passage, there will be a great saving of time. As the gentleman from Lander (Mr. Warwick) has justly remarked, a day and a half of time, or more than that, perhaps, would be saved in the journey between here and Austin. Look, for an instant, at the enormous investments which merchants are obliged to make in consequence of the time consumed in transportation.

Mr. DeLONG. I wish to ask the gentleman a question. I desire to ask him if he will consent to this proviso, or one containing the same idea, for this is rather [illegible] down? If so, he and I would agree. I rise on this question, if nobody else. I propose to strike out the proviso as it now stands, and insert this:—

"*Provided*: That the State may issue railroad bonds to an amount not exceeding three millions of dollars, bearing interest at seven per cent. per annum, at such times as the Legislature may prescribe, to the company that shall first construct and complete a railroad within this State, until the amount of three millions of dollars shall be expended in constructing such road within this State, which company shall contract with the navigable waters of the Sacramento River, or with the navigable waters of the Colorado, or with the navigable waters of the Humboldt River; but no law to issue bonds shall be effective unless sanctioned by a vote of the people at a special election called for that purpose, and said railroad company shall be entitled to have such bonds issued in consideration of said road within this State."

Mr. COLLINS. I apprehend that the gentleman cannot be entertained by the Committee, at least at this time.

The CHAIRMAN. A wide range has been allowed to the discussion, for the reason that no point of order has been raised, but the question immediately before the committee is the amendment of the gentleman from Storey, (Mr. Hovey), to strike out the words, "the company that shall first completes a railroad to the State line," and insert instead the words "to some railroad to be built."

Mr. HOVEY. By the consent of the committee, I will modify my amendment by striking the word "any" in place of "some."

The CHAIRMAN. The Secretary will note the alteration.

Mr. COLLINS. Much has been said upon this policy of State aid. Well, I am not opposed, as a matter of principle, to granting State aid to any institutions, unless there is, and can be shown upon their face very extraordinary reasons for granting such aid. In this great enterprise of uniting by railroad communication the waters of the Atlantic with those of the Pacific, this great international railroad across the continent, cannot be said to be one of the grandest and most noble enterprises of this or any age. Those vast mountain which now stand as the especial [illegible]

world, from the pyramids of Egypt, I think, will sink into insignificance by the side of this great, this stupendous undertaking, which is ultimately to give the commerce of the globe to the people of the United States. Every community, every people, that have had the control of the commerce of the Indies, has been enriched by it. It has gradually and surely given to every such nation the power that swept the ocean. And we can possess now, since the opening of this land, rich in silver and gold, which are the most commodities clamored for by the world, why we should not obtain and secure the entire control of the commerce of the western coasts of the ocean, and of India, and of China. I therefore look upon this Pacific Railroad, and the ultimate effect of its operations, as an enterprise which should challenge the entire confidence, nay, more, the enthusiastic support of every American, and much more of every citizen of Nevada.

As I have already remarked, we ourselves are hemmed in by mountains. We are dependent entirely upon the slow progress of wagons, pack mules and mail teams to communicate with the Atlantic, or to connect ourselves with the world. We have heard here, (and I was glad to hear it), that the enormous capital necessary to carry on the business transactions of this State, would be lessened by three-fourths if we only had a railroad across the mountains. That is undoubtedly so, and that proportion of the capital now employed in our business operations would then be unlocked and ready for investment in other departments of material progress and development. Our heavy merchants now have to lay in for the year, stocks of goods to the amount of a hundred or two hundred thousand dollars each, whereas if we had a railroad communication with California, twenty or twenty-five thousand dollars at most would be sufficient for every individual purpose. That would be an immense reduction upon the investments necessarily made at the present time. Is not that a consideration worthy of our attention, and worthy the consideration of every individual in this Territory? More than that, I say that a means of rapid communication between Nevada and the Atlantic or the Pacific coast, so far as relates to personal transit, would be an immense advantage. A railroad communication from this Territory to the Atlantic or the Pacific, would lessen the expenses of this Territory, and greatly increase our facilities for doing business to the amount of many millions of dollars per year, independent of the millions upon millions that would be saved in consequence of the reduction in freights. Now we are dependent upon California for all our machinery. Notwithstanding the very extraordinary tariff of from three to ten cents per pound, we have been unable to establish foundries here to any considerable extent, and therefore, practically, we are dependent entirely upon California. We are dependent upon that State also for our breadstuffs, for our clothing, and to a certain extent, even for our fuel for carrying on our mining operations. How very important it is, then, that we should adopt measures by which we can place ourselves in direct communication with the Golden State.

I was remarking that this provision which we propose to offer, would operate to stimulate this railroad company. I do not absolutely know, but I am strongly impressed with the conviction, (although I would not like to express a positive opinion at present,) that the amendment suggested by my colleague from Storey, (Mr. DeLong,) which would forbid the giving of any portion of this money to the company until the entire three millions shall be expended in our own Territory, would operate rather as a block upon the construction of this railroad, than as a stimulus. I think, if we give three millions of dollars when they shall have completed the road, and stocked it with rolling-stock to the State line, it will be as much as can be expected from us, and, perhaps, no more than we ought to do. I would like to have it distinctly understood, however, that these three millions of ours shall not be applied to furnishing the road with rolling-stock. When that amendment shall be made, and another amendment, which I hope will be presented—not that it is of any particular value, but simply to prevent the enemies of the State Government from harping upon it before the people—then I hope this section will pass. I am impressed with the conviction, that however important this enterprise is to our very existence—to our very life as a community—there will be, nevertheless, men passing throughout the State during the canvass, who will endeavor to impress upon the people the idea that this provision is mandatory upon the Legislature—that it requires them to loan three millions of dollars—and that therefore the people must pay the interest on that State loan, from and after the time when their State organization enters upon its existence.

The CHAIRMAN. Will the gentleman allow me to suggest that that argument was used last fall.

Mr. COLLINS. I am aware of it. Now, sir, I would not use the word "State," where it is first used in the proviso, but rather the word "Legislature," for that word "State," would imply the idea that the State is now organized, and it will be contended that, by virtue of the Constitution, the Legislature is compelled to take this action. I would say, rather, that the Legislature may, if the interests of the State shall require it, issue these bonds. That would prevent all the pettifogging about the Legislature being peremptorily required to do it. Why, I have no doubt that men will be found on the stump advocating the idea that in law, the words "the State may," means, "the State shall."

Mr. DeLONG. That amendment has been

made already. I think it was made yesterday.

Mr. COLLINS. I must have been a Rip Van Winkle, then, for I certainly was not aware of it.

The CHAIRMAN. I think so such amendment was made yesterday.

Mr. DeLONG. Possibly I am in error about it.

Mr. COLLINS. I do hope that we shall make everything in this Constitution so clear and plain, that there can be no opposition to it on the ground of ambiguity, and at the same time, that we shall make it as brief as is consistent with its perfection and its perspicuity. I feel that the time has arrived when we need a State Government; but I should be very sorry to see this whole clause, permitting the State to loan her credit in aid of a railroad, stricken out; or, on the other hand, to see any general clause adopted, permitting the State to loan her credit, without restriction, to any very great extent. I do think it important, so far as that is concerned, that the Legislature should be restricted. But in respect to this great movement, this grandest scheme of our age and nation; this measure which the people are clamoring for, and have been clamoring for at the very top of their lungs for the last fifteen years; this measure that has been carried through, by the greatest effort, in the Congress of the United States at Washington, over the opposition of those who are hostile to all improvements tending to the benefit of the free States—I do hope, now that the Federal Government has taken hold in earnest, now that Congress has made liberal donations of land and money, now that the government has shown its liberality by permitting the company to issue its own bonds to take precedence of the bonds of the United States, standing responsible for the payment of their interest—I do hope, I say, that the people of Nevada will also be willing to take hold, and give to this enterprise an earnest support, in cooperation with the Federal Government. I think that our refusal to do so at this time, when it has been brought before us, would tend more to cripple that company, than many millions of dollars would aid it. I think that the operation of such a refusal would be to discourage capitalists, because they know our peculiar location, and they know that no people in the world could enjoy such benefits and privileges, resulting from the success of an enterprise of this kind, as the people of Nevada. They know that Nevada is dependent upon this railroad for all she consumes, and, to a great extent, for the shipment of her mineral wealth. They know that such a road would enable us to transport our richest ores to a region where they might be reduced at comparatively little expense. Knowing all these things, they would feel that if the people of Nevada would not interest themselves—if they would not, under careful regulations, restrictions, and safeguards, first by the action of the people through the Legislature, and next by the sanction of the people after such legislative action, give to such an enterprise, then it must be something in regard to which they should, certainly, be careful, and in which the investment of their money would be a matter of doubtful propriety.

Why should the State aid the Pacific Railroad? Why, sir, this enterprise has been before the people of these United States for fifteen years. Thousands, if not millions of people have manifested their interest in it; and yet for fifteen years, it has been languishing; it never has been started, and, probably, would not have been, for at least fifteen years to come, but for the aid of the General Government, which has been so liberally bestowed. It is an enterprise too great and mighty to be left entirely to individuals. Now, to relieve one moment, and I do not mean to repeat myself—

Mr. DUNNE [interrupting]. I am very sorry to rise to a point of order on this question, but I think the discussion had on this subject has been of that character which it should only take when the question comes before the people, or before the Legislature. It has been a discussion of the propriety of making this loan, and that is a question with which we here have nothing to do. Now, as the gentleman has occupied twice the time allowed by the rules, as we propose to adjourn at twelve o'clock, and hold no further session until Monday morning, and as it is very desirable to have the article passed to its engrossment, so that we may not be kept waiting for it—I will not make the point of order, but would call the gentleman's attention to the necessity of coming to a vote immediately.

Mr. EARL. I hope the discussion will take as wide a range now as each and every member desires, because of its importance, and because the discussion has already taken a very wide range.

Mr. COLLINS. I should be very sorry to ignore this Convention, but I do look upon this as one of the most important questions that can come before us, and I do hope, therefore, that the discussion will be allowed to take a wide range, and that every member will be allowed to express himself freely and fully upon it, so that we may pass this provision. If we do pass it, with the distinct and perfect understanding of each and every member of this Convention.

Now, I desire to call the attention of the Convention to the very ingenious opposition which has been made to this measure by my learned friend and colleague [Mr. DeLong]. He has raised the bugbear of the rate of interest, as an argument in opposition to our giving aid to the railroad. Now, if I were to present to this body one reason which I believe to be stronger than another, why the rate of interest should be cut down, and why it would

down, it would be the introduction of a ... into the State of Nevada, connecting ... with the outside world. Because that would ... to develope our resources more than any ... that could possibly be devised. Just ... as our resources are developed, ... our products—our rich ores and our bul... find their markets, in the East, in the ... and in Europe, just in that proportion ... the attention of capitalists be challenged ... region of country which produces such ... products. The cupidity and avarice of ... will be stimulated, and, consequently, ... will rush to this country for investment, ... the rat-tat-tat of mills will be heard by ... where they are heard now only by ... All these causes would operate in our ...; and before we were aware of it, our ... would be flooded with money, and it ... be cheap in proportion to the extent of ... abundance among us. I agree with my col... that the system which exacts such a ... per centage of interest, is a great draw... to any country; but I believe that a rail... would be able to attract the attention ... capitalists hither, to such an extent as to ... the rate of interest, and a railroad, ... is one of the best, readiest, and most ... means of lessening it.

... there is another point to which I desire ... and that is, the hard times. My friend ... colleague was very earnest upon that point. ... he is suffering, to some extent, under a fit ... the blues, and I want to give the Convention ... of the rationale of it. We have law... in our county so numerous, that it is said ... of them are obliged to ride on one and the ... mule. [Laughter]. They have a calendar ... court there, which has nearly four hun... cases upon it, but by reason of the ab... of our judges, at the time specified by ... for the session of the courts, these cases ... be tried, and these gentlemen, being ... virtually tied up, are exceedingly poor. ... these circumstances, they feel that the ... community, which is really alive with ... and business, is sympathising with ... They think that the whole community ... suffering from poverty and embarrassment, ... because they are poor.

... my colleague talks to us as though he ... these three millions of dollars would ... called from the State at once; but, on the ..., the section before us contemplates ... it will not be called for until the State ... is reached by the railroad; and my col... and have no fears that the road will be ... to that line for several years to come. ... he is now disposed to protract that time ... or four years longer, by providing that ... three millions of dollars proposed to be ... by the State, shall not be expended on ... line of this great railroad, which is to unite ... two oceans, until it shall have reached our ... Territory. Now, I verily believe—and I ... sorry to be forced to believe it—from my experience in railroad matters, that it will take much longer to complete this road across the mountains, than gentlemen may suppose. I have had a good deal of experience in railroad matters, having always taken great interest in them, and contributed as liberally to aid them as I was able to afford, and never yet have I been forced to regret the efforts I have made in their behalf. But my experience teaches me to anticipate that the Sierra Nevada range of mountains, which the Pacific Railroad must cross, will prove to be an obstacle requiring a longer time to surmount than we have at the present time, the least conception. I fear it will take as many as ten years, and I should not be at all astonished if it required fifteen, although it may, possibly, be accomplished in six or seven years. But, I ask, are we to be deterred from giving this privilege to the people of Nevada of aiding that road, whenever it shall have surmounted that obstacle, simply because in Storey County our attorneys happen, at this particular time, to be tied up, and likely to be so until next November? The probability is, that before the railroad shall be completed across those mountains, we shall be in a condition of great prosperity. A revolution may transpire, and prosperity may return, in this fast age, before we are called upon to issue these bonds, or before we are ever called upon by the Legislature to decide at the polls, whether or not we shall grant this aid.

And again, suppose the times should be hard, and suppose that the Legislature should fail to pass a bill to provide for granting aid to this railroad if the people shall desire to do so. The gentleman tells us that the road will be built just as soon without this aid as with it; and suppose the Legislature shall come to the conclusion that the people are really unable to lend this three millions of dollars. Why, in that event, the Legislature would doubtless refuse to pass the bill, or even if they did pass it, it is still left for the people to decide, and the people may reject it. The only question here is, shall we deny to the people the privilege of granting this aid, whether they are able to grant it or not. For one, I say I want to give them that privilege; and I say we do injustice to the people of the State, and injustice to the enterprise, by refusing our influence, our moral influence, at least, in support of this great enterprise. I am grateful to the Convention for the audience it has given me, and I will occupy no more time on this important subject.

Mr. FITCH. I desire only to say this: The argument of my colleague, (Mr. DeLong), if it proves anything, proves too much. He says, very correctly, that capitalists will not invest in railroad enterprises, because they can receive larger rates of interest in other investments. Now, if that be the case, then clearly the only way to build the road at all is by public aid.

Mr. NOURSE. I have but a word to say

upon the amendment. When the question comes up upon my amendment, striking out the clause, I shall ask for the ayes and noes, as is customary, I believe, in such cases; but just now, I merely wish to call attention to one clause in the proposed amendment, and that is the phrase "any railroad." It provides that the Legislature may issue bonds, etc., to "any railroad." I suppose that cannot be construed otherwise than as applying to a dozen railroads, if as many should be built. I desire to call especial attention to that. When the word "some" was used, it confined the appropriation to the one railroad; but if you substitute the word "any" then, if one railroad gets it, it may be demanded by any and all other railroads.

Mr. HOVEY. I will insert in the amendment the word "one," so that it will read, "any one railroad."

Mr. EARL. This discussion has taken a very wide range, but I should regret, as I remarked a short time ago, to see it dropped where it is. I think many of us do not understand the amendments offered, and many gentlemen are in doubt as to what action they ought to take in that matter. There have been able and ingenious speeches made on the subject on both sides. Now, so far as I understand the amendment, it anticipates the expenditure of capital in crossing the Sierra Nevada mountains, if necessity shall require it, and I fully concur in that amendment. I would not be so selfish as to desire to check the progress of the railroad as any particular point, merely because some portion of our money might be expended beyond our State lines. If my own particular views could have been consulted, I would have said that we should give the railroad company three millions whenever the road shall reach a certain point, and when it reaches the State line, near Crystal Peak, three millions more. That is a basis which we might with propriety set upon, and not cut ourselves off from doing anything to aid in securing a railroad communication. The working of our mines would be advanced by securing this railroad communication, to an extent almost beyond imagination, and it is impossible to estimate the benefit which would result to the laboring classes from the development of the poorer class of mines. As to the State investing in stock, that question with me is not a matter of argument. So far as such investments go, I say, show me a case where such investments have ever proved to be good investments. I have yet to learn of such an instance; although I have observed the fluctuations of stocks for a long period of time, I have yet to see where the first investment of this kind in a railroad enterprise has proved to be a good investment. But that is not the point. These enterprises are a great help to a certain class of people, to wit, the laboring class, and they are of immense importance in the development of a country. I remember that, in Indiana, before there were any internal improvements, the farmers were selling their corn at six, eight, and ten cents per bushel. Then a canal was constructed, and the price rose to five ten per bushel; and then the railroad came along, and it rose at once to fifty and seventy-five cents a bushel. That was the work of the railroad in that State, although the investments in the railroad enterprise have proved the best in the world.

Now it is said, I know, that "a burnt child dreads the fire," and it may be that in Minnesota the working of their system of internal improvements was bad; but, nevertheless, it does not follow that such a system will be bad here. We do not propose to offer aid to any particular road; but we propose to offer a premium to the road that shall be first built, so as to give us communication with navigable waters. The roads are to build the road first, and then they will get the premium.

The beneficial results arising from the policy of giving premiums have already been referred to, and illustrated by the fact that it has stimulated the production of certain articles in California. The correctness of that illustration I can verify from a circumstance within my own knowledge. In Tehama County, where I resided formerly, no tobacco was raised, but a large amount of it has been grown there recently, in consequence of the premium offered by the State of California. And the same beneficial results have been obtained in California by this policy in regard to manufactures. That is the true way to develop the resources of a country. The General Government has taken hold of this enterprise in that spirit, and made liberal donations, and now are we to stand looking on like stupid "old fogies," afraid of investing a single dollar for fear we shall never get a return? That is not the proper way to do business. I have seen men start out in business in a small way, and never increase their business for fear of a failure. They would go plodding on, doing a small and safe business, trusting that by and by, in some way they might rise. Perhaps they might do so if they lived long enough, and perhaps, on the contrary, they might die of old age before they would achieve that success, which more enterprising men are daily winning.

Now, if we invest in this enterprise six millions of dollars, or three millions, as the section stands now, would we ever get any adequate return? That is the question. Let us look at the practical working of this matter, in a business point of view. Suppose our investment builds a single mile of the road, will it not happen the completion of the entire road will much? If we get the road one year sooner, in consequence of our investment, then, during that year, we get our supplies, our wood, and our lumber for the mines, at greatly reduced cost, and we are enabled to work a class of rock which we cannot now work at all. We shall get our freights, and everything else so much cheaper, that the difference will be more than sufficient to pay the interest on our investment. Gentlemen say that the interest amounts

...road bonds for the State to pay, and they ask, ...can we raise this amount of $210,000 a ...? Why, sir, the little city of Virginia ...expended every year, amounting to ..., and are we to stand here and say ...this Territory, or this State, as we hope it ...shortly to become, cannot raise $210,000 a ...? We have to pay the expenses of not ...Virginia City, but of Storey County also, ...which is another very considerable item. Then ...have the expense of the city of Gold Hill, ...that is a municipal corporation, too, and ...constitutes still another considerable bur... which has to be borne by the inhabitants ...Storey County. Altogether, Storey County ...for county and municipal governments ...$600,000 annually. And yet they tell us ...the whole State of Nevada cannot pay this ...interest, amounting to only $210,000 annually. ...seems to me that such an assertion is perfectly ..., or, at least, that gentlemen who make ...must have lost sight of the real wealth of ...Territory. They propose that we shall ...move along slowly, something like the old style ...of doing business. I say, we have too much ...life and energy for that.

Now, sir, in relation to sustaining a State ...government here, look at the advantages ...would be derived in a business point of ...view. It must be obvious to every business man ...that it will clear away the clouds that now ...seem to overhang our prosperity. Men will ...see that the amount expended by the State ...government will be returned ten-fold in the ...shape of trade. And, sir, it is equally plain, ...to my mind, that the money expended in aid of ...the railroad, will be the best investment the ...State can make. It will give a great impetus ...to our mercantile business; and, if it does ...otherwise increase the taxes to be paid for the ...support of our Government, the increase of ...trade will be more than sufficient to compensate ...for that.

There is no question but that this railroad is ...a paramount necessity for us, and now is the ...time to build it. I have thought, for months ...past, that if we are to become a State, we ...ought to take hold, shoulder to shoulder, and ...push forward this great enterprise. I think we ...should offer a premium for building the road a ...certain distance, and then another premium ...when it reaches another certain distance, and ..., in three years time, it seems to me—I ...may be wrong as to the time, but I hope not—...the railroad may be finished down to the foot of ...the mountains on this side, if not even to the ...city of Virginia. I estimate that in one year ...the county of Storey pays to Washoe County ...alone, enough to build a railroad from Virginia ...to Washoe City. I have no hesitation in say... that the amount we pay annually, in ...freights, for timber and wood brought to the ...cities of Virginia and Gold Hill—for the entire ...amount of wood and timber that we use—must ...come from the Sierras, after another year—...would be sufficient to build a railroad over that ...route. I have not the slightest doubt of it. Then the water-power with which we should be connected, would be another very great item in the working of our mines. Again, look at Lander and Humboldt counties, where there are thousands of mines which cannot be opened, whose vast resources must remain undeveloped, merely for the want of transportation. In view of all these advantages to be derived from the railroad, ought we, for fear of a little State debt—for fear of the expenditure of this comparatively trifling sum of money—to withhold our assistance from this important work? It would be much better to take hold of it now, and put it through at once, like sensible, enterprising, energetic business men.

Mr. HOVEY. At the suggestion of the gentleman from Washoe, (Mr. Mourer,) that my amendment may be more clearly understood to refer to but one railroad, I will modify it, so as to read, "to some one railroad," instead of "to any railroad."

The CHAIRMAN. The Secretary will make the change.

Mr. HOVEY. The object of this amendment is, to give to the people of the State a chance to say whether they will give a half a million, or three millions, or any other sum under three millions, towards the building of that tunnel, the greater part of which, I understand, lies in California.

Mr. LOCKWOOD. I do not wish to occupy more than three minutes, but I think the discussion thus far has been very unfair to the opponents of this measure. Gentlemen on the other side have undertaken to argue that we are opposed to the Pacific Railroad. Why, sir, in the beginning, I distinctly disclaimed any hostility to the measure, and I think, if I had time, I could give cogent reasons which have not been adduced in favor of that enterprise. Since I came to California, it has been the dream of my ambition to do something, and to do everything in my power for the promotion of this one great enterprise. The Pacific Railroad will make San Francisco, on the Pacific coast, what New York is on the Atlantic. I believe it will bring the wealth of the world teeming along that great national highway. It will secure to us such a commerce as that which has built up New York—such a commerce as that which, in ancient times, built up Thebes, and Carthage, and those other glorious old cities, whose memory and fame live in the traditions and records of the past. But while I fully believe this, I must be allowed to say that I do not believe in the mode in which it is now attempted to prosecute this enterprise. I lay down this proposition, that I do not believe it will facilitate the construction of this road one iota to make this loan. I do not regard this question as being one of such great importance as some gentlemen seem to look upon it, because I trust the people; but I do not believe in cumbering our Constitution with anything which is to be a

nullity. I am in favor, first, last, and all the time, of doing anything that we consistently can do to favor the prosecution of this great national work; but I think that when a gentleman rises here, as one gentleman did on a previous occasion, and tells us that two or three thousand people in Virginia City are unable to pay the paltry sum of two dollars a year as a poll-tax, for the sake of consistency, we should not rise the next day and tell us they are able to bear the burthen of still higher taxation. I hope the gentleman from Storey will remember his poverty-stricken constituency in his advocacy of this measure. I hope the Reporter will put down my remarks on this subject, not that I am at all anxious to get into print, but because I want it put plainly on the record that I am in favor of the Pacific Railroad, and that in opposing this measure I am not seeking to defeat or hinder that enterprise.

Mr. EARL. I suggest that it is important to put the gentleman down as being in favor of the Pacific Railroad, because from his course here his constituents would certainly class him among those who are against it.

Mr. LOCKWOOD. I should not have said a word further upon this subject, but for the fact that almost every gentleman who has risen here in advocacy of this proviso, has taken the position that we who have opposed it are against the Pacific Railroad—at least that is the plain inference from reading their speeches, as published by the reporters.

Mr. FITCH. I think the gentleman is in favor of the Pacific Railroad, something in the same manner as the Democrats are in favor of the Union, at the same time that they are opposed to all measures for its preservation.

Mr. LOCKWOOD. Now, Mr. Chairman, I hope that we shall come to a vote on this proposition. I do not desire to launch out into a speech to show the great benefit of this Pacific Railroad; how it would enable the Government to move armies readily, and so preserve the peace of the republic on the Pacific shores, and all that. Nobody disputes the fact that the road would be of immense advantage, not only to us, but to the entire nation, and therefore I do not propose any thing of that kind. I believe it ought to be the primary object of every politician, and of every man who desires to promote the welfare and the success of our Government, to aid, as much as he can, in the construction of that work. I believe that the national aid ought to be extended to it, but I do not believe in inserting a clause in this Constitution to the effect that the Legislature are going to leave it to the people of Nevada to decide whether they shall contribute three millions of dollars towards it or not. They cannot give it if they would. But I will not further prolong my remarks, because I presume that I am better qualified for shoving the jack-plane, than for making speeches before such a body as this Convention.

Mr. HOVEY. In order that the gentleman from Washoe (Mr. Nourse) may have the opportunity which he has asked, to close the debate on this proviso, on Monday, I now move that the Committee rise, report progress, and ask leave to sit again.

Mr. NOURSE. I hope we shall first vote on this amendment.

The question was taken on the motion to rise and report progress, and it was agreed to.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration Article VIII, had made some further progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

Mr. FITCH. I would inquire if it is understood that the resolution to adjourn over till Monday was passed.

The PRESIDENT. Yes, sir. It was resolved that when the Convention adjourns at twelve o'clock, it adjourn to meet on Monday, at eleven o'clock.

Mr. FITCH. Then I move that the Convention do now adjourn.

The question was taken, and the motion was agreed to.

Accordingly, at five minutes before twelve o'clock, the Convention adjourned.

SEVENTH DAY.

CARSON, July 11, 1864.

The Convention met at 11 o'clock, and was called to order by the President.

The roll was called, and the following members responded to their names:—

Messrs. Brady, Brosnan, Crawford, DeLong, Dunne, Folsom, Frizell, Gibson, Hawley, Kinkead, Lockwood, Mason, McClinton, Murdock, Parker, Proctor, Tagliabue, Wetherill, and the President—19.

Mr. GIBSON. As there is no quorum in attendance, I move that we take a recess until one o'clock, P. M. I name that hour, because Langton's stage, which will bring most of the members from Virginia, will not arrive until about that time.

Mr. DUNNE. I move a call of the House.

Mr. GIBSON. I do not see the use of that.

Mr. MURDOCK. I have been requested to ask leave of absence for Mr. Bobbs. He will be here in the stage at noon.

Mr. DeLONG. This clock is a little faster than my time, however it may be with others.

Mr. BRADY. I ask leave of absence for Mr. Earl.

Mr. DUNNE. I object to granting leave of absence to any one. We have no quorum, and we cannot do it.

The question was taken on the motion for a call of the House, and it was agreed to.

Mr. FITCH made his appearance at the bar, presented his excuse for being absent, and was excused.

Mr. PROCTOR. As there is now a quorum, I move that further proceedings under the call be dispensed with.

The question was taken, and the motion was agreed to.

On motion of Mr. BRADY, indefinite leave of absence was granted to Mr. Hudson.

On motion of Mr. MURDOCK, leave of absence for the day was granted to Mr. Belden.

On motion of Mr. DUNNE, leave of absence for the day was granted to Mr. Banks.

Prayer was offered by the Rev. Mr. Nims.

Messrs. Banks, Collins, Chapin, Hovey, Hudson, Nourse, and Startevant appeared and took their seats.

The journal of Saturday was read and approved.

EVENING SESSIONS.

Mr. DUNNE. Pursuant to notice, I move that the resolution fixing the hours of sessions of this body be amended, so as to read as follows:—

Resolved, That this Convention shall, until otherwise ordered, meet at nine o'clock, A. M., (Sundays excepted,) and continue in session until noon, at which time a recess shall be taken: it shall meet again at two o'clock, and hold the session until five o'clock, P. M., at which time a recess shall be taken until seven o'clock, P. M., of the same day. This amendment shall be in force on and after Tuesday, the twelfth instant.

There are two advantages to be gained by adopting this resolution as our standing rule. One is, that we shall have an evening session, and gain an additional hour at the noon recess; the other is, that as it does not go into force until to-morrow night, the Chairman of the Judiciary Committee is allowed one more chance of getting that committee together, and I hope he will succeed to-night in doing so.

The question was taken, and the resolution was adopted.

THE ORDINANCE.

The Convention proceeded to the consideration of business on the general file.

The Ordinance in relation to Slavery, Religious Toleration and the Public Lands, was read a third time, as follows:—

In obedience to the requirements of an act of Congress of the United States, approved March 21st, A. D. 1864, to enable the people of Nevada to form a Constitution and State Government, this Convention, elected and convened in obedience to said Enabling Act, do ordain as follows; which ordinance shall be irrevocable without the consent of the United States, and the people of the State of Nevada:—

Section. That there shall be in the said State of Nevada neither slavery nor involuntary servitude, otherwise than for the punishment for crimes whereof the party shall have been duly convicted.

Section. That perfect toleration of religious sentiment shall be secured, and no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship.

Section. That the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that the lands belonging to the citizens of the United States residing without the said State, shall never be taxed higher than the land belonging to residents thereof; and that no taxes shall be imposed by said State on lands or property therein belonging to, or which may hereafter be purchased by the United States.

Mr. COLLINS. I observe that there is a slight discrepancy between the Ordinance as read by the Clerk, and the Enabling Act. The Ordinance says, there shall be in the said State of Nevada, "neither slavery nor involuntary servitude otherwise than for the punishment for crimes whereof the party shall have been duly convicted." I regarded it merely as a clerical error, and therefore had changed the word "for" to the word "in," so as to read, "otherwise than in the punishment for crimes," which is in accordance with the language of the Enabling Act. As this is to be the official copy, I think we had better make it conform exactly to the words of the Enabling Act, and for that reason, and that there may be no informality about it, I move that the word "for" be stricken out, and the word "in," substituted, so that the clause will read:—

"That there shall be in the said State of Nevada neither slavery nor involuntary servitude, otherwise than in the punishment for crimes whereof the party shall have been duly convicted."

By unanimous consent, the Secretary was directed to make the alteration.

The question was taken by yeas and nays on the final passage of the Ordinance, and the vote resulted—yeas, 28; nays, none—as follows:—

Yeas—Messrs. Banks, Brady, Bronson, Chapin, Collins, Crawford, DeLong, Dunne, Fitch, Friedl, Folsom, Gibson, Hawley, Hovey, Hudson, Kinkead, Lockwood, Mason, McClinton, Murdock, Nourse, Parker, Proctor, Startevant, Tagliabue, Toano, Wetherill, and Mr. President—28.

Nays—none.

So the Ordinance was passed.

THE PREAMBLE.

The preamble to the Constitution was taken up and read a third time, as follows:—

PREAMBLE.

We, the people of the State of Nevada, grateful to Almighty God for our freedom, in order to secure its blessings, insure domestic tranquillity, and form a more perfect Government, do establish this Constitution.

The question was taken by yeas and nays on the final passage of the preamble, and the vote resulted—yeas, 28; nays, none—as follows:—

Yeas—Messrs. Banks, Brady, Bronson, Chapin, Collins, Crawford, DeLong, Dunne, Fitch, Friedl, Folsom, Gibson, Hawley, Hovey, Hudson, Kinkead, Lockwood, Mason, McClinton, Murdock, Nourse, Parker, Proctor, Startevant, Tagliabue, Toano, Wetherill, and Mr. President—28.

Nays—none.

So the Preamble was passed.

DECLARATION OF RIGHTS.

Article I, entitled Declaration of Rights, was read a third time, as follows:—

ARTICLE I.

DECLARATION OF RIGHTS.

Section 1. All men are by nature free and equal, and have certain inherent rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. But the paramount allegiance of every citizen is due to the Federal Government, in the exercise of all its constitutional powers as the same have been, or may be, defined by the Federal Judiciary, and no power vested in the people of this or any other State of the Federal Union to dissolve their connection therewith, or perform any act tending to impair, subvert, or resist the supreme authority of the Government of the United States. The Constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whosoever shall by any portion of the States, or people thereof, attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by warrant of the Constitution, employ armed force in compelling obedience to its authority.

Sec. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law; and, in civil cases, if three-fourths of the jurors agree upon a verdict, it shall stand and have the same force and effect as a verdict by the whole jury; provided, the Legislature, by a law passed by a two-thirds vote of each branch thereof, may require a unanimous verdict, notwithstanding this provision.

Sec. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Sec. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Sec. 6. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

Sec. 7. All persons shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident or the presumption great.

Sec. 8. No person shall be held to answer for capital or otherwise infamous crime, (except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature,) except on presentment or indictment of a grand jury; and in any trial, in any Court whatever, the party accused shall be allowed to appear and defend, in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation having been first made or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterwards made.

Sec. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted or exonerated.

Sec. 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

Sec. 11. The military shall be subordinate to the civil power. No standing army shall be maintained by this State in time of peace, and in time of war no appropriation for a standing army shall be for a longer time than two years.

Sec. 12. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in the manner to be prescribed by law.

Sec. 13. Representation shall be apportioned according to population.

Sec. 14. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for payment of any debts or liabilities hereafter contracted; and there shall be no imprisonment for debt, except in case of fraud, and no person shall be imprisoned for a militia fine in time of peace.

Sec. 15. No bill of attainder, ex-post facto law, or law impairing the obligation of contracts, shall ever be passed.

Sec. 16. Foreigners who are or may hereafter become bona fide residents of this State, shall enjoy the same rights, in respect to the possession, enjoyment and inheritance of property, as native-born citizens.

Sec. 17. Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.

Sec. 18. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

Sec. 19. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort.

Sec. 20. This enumeration of rights shall not be construed to impair or deny others retained by the people.

EVIDENCE OF TREASON.

Mr. DUNNE. I move to recommit that article to a select committee of three, with special instructions to amend Section 19, by adding thereto these words—"No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or on confession in open court." So that the section will read as follows:—

Sec. 19. Treason against the State shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or on confession in open court.

Before the question is taken on that amendment, I desire to call attention of members to the necessity of its adoption, in order that we may be in harmony with the action which the Convention has already taken, in respect to other portions of this Constitution. So far, the Convention, in its amendments to the Constitution adopted by the preceding Convention, has shown a disposition to exercise a li-

and spirit towards persons who may be charged with treason. This amendment proposes to give to such persons the further protection of requiring two witnesses to prove the crime of treason. That crime is one of the gravest known to the law. I think, without attempting to make any argument or speech upon it—for I do not wish to occupy the time—that the propriety of the amendment will suggest itself to every member, and it certainly will be in harmony with the previous action of this Convention.

Mr. FITCH. Without entering into any lengthy speech, I desire to say only, that I hope this amendment will not prevail. There seems to me to be no reason for requiring two witnesses to convict of this crime, or for extending any special privilege to a person who may be accused of treason, when but one witness is required to convict a person accused of murder.

Mr. PARKER. I desire to ask a question. Can a grand jury find a bill, without examining one witness?

Mr. FITCH. They can find a bill upon any evidence which will make out a *prima facie* case.

Mr. PARKER. I think they cannot, according to the laws of this Territory.

Mr. DeLONG. I would like to give one reason why I think this amendment ought to prevail, and that is, that persons are not apt to be charged with, or tried for treason, except in time of war, or of peril to the commonwealth; and in such a time, when the public mind is greatly excited, when conflicting rumors and alarms are startling the peace of community, it is but a proper measure of precaution to require at least two witnesses to convict a man of this infamous crime. A man charged with the crime of treason—a crime most odious in its character, and most revolting to the human mind—is liable, even before the examination, to labor under the condemnation of the entire community. The cry goes forth against him, and the people demand his blood. It is almost equivalent to a conviction to charge a man with the crime at such a time. It is like charging one with incendiarism when a city is in flames, and when an excited populace are ready to throw him who may be so charged, into the burning buildings. So, in cases of treason, or trials for treason: greater injustice, more flagrant wrongs, are liable to be perpetrated upon a man charged with that crime, than upon one charged with any other crime known in the world. It is for this reason, that the enlightened men of every country, and of every age, have invariably required that two witnesses, at least, to the same overt act, should be necessary to convict a man of that charge. That has been the requirement, from the days of King John down to the present time. It is contained in every written Constitution, and in every statutory law relating to the crime of treason. The wisdom of the fathers who framed the Constitution of the United States, implanted that provision therein, and the wisdom of those who framed the Constitutions of the several States of the Union, has been manifested in the adoption of the same provision. And why, then, should we, in entering upon our political existence as a State, in this time of national peril, when there is revolution in progress, when every man's soul is in arms, when party feeling runs high, when we have now actual rebellion in our midst, when we have men amongst us known to be in opposition to the Government, and all who sympathize with the Government—why, I ask, should we at such a time, in drafting our fundamental law, omit that wise provision, that humane and judicious safeguard? I say if we omit it, we are treading the path of uncertainty, at a wrong, a dangerous period. At any time, it would be an innovation against old-time usage and custom, much to be dreaded, and it is much more so at the present time. I earnestly hope that the Convention will treat this as a solemn and serious matter, as it certainly is. We are now making a fundamental law for the future—a law which is to live and be in force for generations after we are sleeping in our graves. Let us, therefore, enact such a law that when the terrible charge of treason is made—and against whom it may be made, we cannot foresee—that whenever that charge shall be made against any citizen, conviction shall only follow upon the testimony of two competent witnesses. Such has been the universal law of every civilized nation on the face of the globe; and I hope, therefore, that this Convention will adopt the amendment proposed by the gentleman from Humboldt.

Mr. NOURSE. I do not lay much stress upon the necessity of making this section correspond with the Constitution of the United States; for that provides only for the punishment of treason against the United States. But in the argument of the gentleman from Storey, (Mr. DeLong), I recognize precisely the same reasons which I tried to set forth, and which actuated me in voting for the same clause when this section was under consideration in Committee of the Whole. I am glad to find, therefore, that the sober second thought has brought other gentlemen to the same conclusion. It is, as the gentleman from Storey says, a crime which is only charged against a man in times of great political excitement. It is altogether a political crime, and the operation of this section, as adopted in Committee of the Whole, would be to place it in the power of any one man to ruin his political opponent by convicting him of this infamous crime of treason.

Mr. DeLONG. If the gentleman will allow me, I would like to ask him what he means by "sober second thought?" [Merriment.] I have been in favor of this provision, now offered, all along, and have all along insisted, when the matter was previously under consideration, that there ought to be two witnesses

to convict a person of treason, although I deemed it sufficient to have one witness to one overt act, and another to another. I referred to the Constitution of California, which requires two witnesses to the same overt act, and offered an amendment adopting nearly the same language; but inasmuch as I could not persuade the Convention to agree with me, I took what I regarded as the next best course. I certainly am in favor, and have advocated the requiring of two witnesses in order to convict of treason.

Mr. NOURSE. I understood the gentleman from Stanislaus to oppose this clause, and to contend that there should be but one witness to one overt act, and another to another. I am only sorry that the gentleman's "sober second thought" is not as good, or has not been as effectual as I had supposed it was. I therefore withdraw the compliment which I had intended to pay him. [Laughter.]

The question was taken by yeas and nays on Mr. Dunne's motion to recommit, and it was agreed to—yeas, 19; nays, 9—as follows:—

YEAS—Messrs. Ayers, Collier, Crawford, DeLong, Dunne, Fetsch, Freeman, Hawley, Hervey, Hudson, Kinkead, McClinton, Noonan, Porter, Proctor, Shurtleff, Smith, Tuttle, and Mr. President—19.

NAYS—Messrs. Brosnan, Chapin, Fitch, Gibson, Lockwood, Mason, Murdock, and Wellin—9.

During the voting—

Mr. DeLONG. I would suggest to the gentleman from Humboldt, and also to the Convention, that if this motion to recommit the article to a special committee is carried, it will have to come up again on another day, and I think we can save a great deal of time by suspending the rules and adopting the amendment now.

Mr. FITCH. Let us see first what is the sense of the Convention.

Mr. DeLONG. Then it is recommitted, and no longer within our power to control it.

The PRESIDENT. No motion is in order during the calling of the roll.

Mr. DeLONG. I think a motion might be made in order, before the vote is announced, and before the article is thereby placed out of our power. I do not wish to press the matter, however; I only desired to save time.

Mr. FITCH. I think we had better let it take the usual course. The article can be reported back in ten minutes.

The result of the vote having been announced,

The PRESIDENT appointed Messrs. Dunne, DeLong, and Nourse as the special committee, to which the article was recommitted.

THE GRAND JURY SYSTEM.

Mr. PROCTOR. I wish to make a similar motion in relation to Section 8. I move that Section 8 of Article I, be referred to a select committee of five, with instructions to make the following amendment:

Strike out the words, "no person shall be held to answer for capital or other infamous crimes," and insert in lieu thereof, the following words:—

"All criminal offenses shall be tried upon a complaint in writing, made by the prosecuting attorney of the respective counties, without the intervention of a grand jury."

Mr. CHAPIN. I would like to hear the section as it is now, and also as it would stand with that amendment.

Mr. BROSNAN. I think the amendment would come in place better after the first two lines.

The PRESIDENT. It seems to involve the idea of abolishing the grand jury system altogether, and if that be the case, I think it will be necessary to strike out some other language in the motion.

Mr. PROCTOR. Yes, sir; I will include in the motion to strike out, the words, "except on presentment or indictment of a grand jury."

Mr. NOURSE. I suppose the intention of the amendment is to do away with the necessity of having a grand jury. Now, Mr. President, I am not prepared to say that such an amendment may not be an improvement upon our jury system. The grand jury system has some objectionable features undoubtedly, together with, perhaps, some good ones. But I suggest, for the consideration of the Convention, that there is a provision of the Constitution of the United States which is held to apply, not merely to proceedings of the United States Courts, but to all law proceedings in other Courts, to all cases where a jury trial may be had. It is held to be of universal application. Now, can we run counter to that provision of the United States Constitution? This section, as proposed to be amended, says, in effect, that a person may be presented and tried, without the intervention of a grand jury, by presentment or indictment. But Article V of the amendments to the Constitution of the United States, says:—

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval service, or in the militia when in actual service in time of war or public danger."

Now the point I wish to suggest for the careful consideration of the Convention is, does not this proposed amendment clearly conflict with the Constitution of the United States? I have no feeling about the matter, one way or the other, and as a matter of original preference, I think I should favor the gentleman's proposition. But it seems to me that we are barred altogether from taking any such action by the Constitution of the United States, which says, in this unmistakable language, that no person shall be held to answer for crimes which are capital or infamous without the intervention of a grand jury. If it could be so arranged that persons could be held for crimes other than those which are capital, or otherwise infamous, without the interposition of a grand jury, it might be that it would do.

Mr. PROCTOR. I do not understand that provision of the United States Constitution as applying to cases where indictments are brought under State laws. It refers simply to violations of the laws of the United States, and it seems to me that, so far as regulating the proceedings in regard to offences against the State is concerned, we have a perfect right to exercise full control, without any conflict at all with the provisions of the Constitution of the United States.

(Mr. FITCH in the Chair.)

Mr. JOHNSON. Whilst I agree with the main proposition of the gentleman from Nye, (Mr. Proctor), at the same time I dissent from his views as to the propriety of making the proposed change. This matter was before the former Convention, and was there the subject of a good deal of discussion in Committee of the Whole. Now, Mr. President, my judgment is that whilst that Convention made many innovations beneficial in their character upon the jury system which prevails elsewhere, and whilst we have, with proper circumspection, been following in the same path, this particular feature is one of too much consequence and importance to justify us in venturing to make any change. I concede that a system authorizing the exercise of inquisitorial powers, by grand juries, is one fraught with evil; but at the same time, I think that the adoption of the proposed change would also be productive of evil results. It would leave it in the power of the District Attorney of any county to prosecute whomsoever he might think proper, or not to prosecute, at his option. It would be abolishing one system, admitted to be fraught with evils, but only to seek refuge in another system, abounding in yet greater evils. The difference resolves itself into this—that whilst under the one system you have a grand jury of any seventeen men, and the concurrence of at least twelve of them—good and lawful citizens—is required to find a bill of indictment; under the other, one man alone is sufficient to institute a prosecution against any person. Under the grand jury system, it requires the concurrence of at least twelve good citizens to find a bill of indictment, or to present a person for any offense, while under this newly proposed system, instead of requiring the concurrence of twelve men, one man who may happen to be in the position or office of Prosecuting Attorney, has it in his power to find what is, in effect, a bill of indictment, or to make a presentment.

Now, sir, I have personally known of instances where grand juries have been the instruments of inflicting irreparable injury upon individuals, by means of the power with which they are invested, in the ordinary course of judicial proceedings in courts of justice; but I can conceive of cases where much greater injustice and wrong might be perpetrated through the instrumentality of a single individual, who, in the capacity of Prosecuting Attorney, should have power to pass upon the rights of individuals, or upon whatever questions might arise in that connection, without the necessity of securing the concurrence or the united action of twelve good and true men, or of any other number of men. I hope, therefore, that the sense of the Convention will be to retain the provision as it now is.

I believe the experiment proposed by this amendment has already been tried in one State at least, if not in others. I think the Constitution of Indiana contains a provision of this kind. It has been stated, if I am not mistaken, that the experiment is one which has never been tried; but I believe that in the Constitution of that State there is no provision in respect to a grand jury such as is found in the Constitution which we have adopted as our basis, and, therefore, it is left open to legislation, in that State, to provide for a grand jury system or not. I do not doubt but that this Convention has the power, if it is deemed proper or necessary, to abolish the grand jury system; but I think I can see that the operation of the system proposed to be substituted, might produce results which would cause many, if not all of us to regret, or to have occasion to regret, that we had clothed any one public functionary with this extraordinary power, without proper check or restriction. I cannot conceive how it would be possible for the Legislature, in the passage of laws under this provision, as the gentleman from Nye has proposed to amend it, to throw such safeguards and restrictions about it as would prevent the possibility, or even the probability of an undue and improper exercise of this power. Therefore, I hope the section will be left as we find it. There have been times when, without a due examination or consideration of this question, I was prepared to think that, possibly, it would not be an unadvisable change. When the former Convention was in session, I was inclined to favor such a change; but after more deliberate reflection upon the subject, and considering it in all its bearings, I have arrived at the conclusion that it would be, to say the least, an innovation of questionable expediency.

Mr. BROSNAN. I shall vote for the motion to recommit the section, but I will not detain the Convention with any extended remarks in regard to it. I should, for myself, prefer, however, if we are going to abolish the grand jury system, to provide in the amendment that the Legislature may restore the old rule, whenever they may deem it proper. I shall, nevertheless, vote for the recommittal, and leave the committee to whom it is referred to provide for that matter in such way as they may think fit.

Mr. HOVEY. There are gentlemen absent now, who I know desire to take a hand in this fight, and therefore I hope the section will be recommitted. I refer to the gentleman from Lauder, (Mr. Warwick,) and the gentleman from Lyon, (Mr. Kennedy).

Mr. NOURSE. In regard to my objection that we are debarred by the Constitution of the

United States from attempting this experiment, I would say that the analogy which the gentleman from Nye (Mr. Proctor) seems to think he has discovered, does not exist in the present case. In the matter of treason, the Constitution of the United States provides that treason against the United States shall consist only in adhering to their enemies, or giving them aid and comfort; and the next clause provides that no person shall be convicted of treason, except upon the testimony of two or more witnesses to the same overt act. The connection shows in what it is meant to apply. Now, in Article VII of the Amendments to the Constitution of the United States, we find the following language:—

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

Who ever doubted that that applied to jury trials in all the courts? I happen to have had some practical experience in this matter, because in a trial before a Justice in which I was once engaged, the defendant demanded a jury trial, and there was no provision of law for giving it, or rather, there was a provision for a jury of six, while the defendant demanded a jury of twelve. And the verdict against him was set aside by the highest court in the State, simply because of this provision in the Constitution of the United States—because it was held that that applied no less to the process of trials in the State courts than to trials in the United States courts—that it was a right guaranteed to every person, no matter in what court, whether State or National, the subject matter was to be tried. It is construed to be a personal right guaranteed by the Constitution of the United States to every citizen. Now, what is the distinction, so far as relates to the extent of its application, between that provision and Article V, which says,—

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

It says distinctly, that "no person shall be held," etc.; it does not say "in one of the United States Courts;" it does not intimate that it applies only to crimes against the United States; but it declares, in most broad, sweeping, and general terms, that it is a right which shall be preserved to every individual, whether the trial is to be in the State or in the National courts. I would like to know upon what authority gentlemen so summarily say that the provision applies only to trials in United States courts. Do they say that the Constitution of the United States cannot, or does not, guard personal rights against any infringement, whether by State or National authorities? Do they say that it was intended only to secure and guard the personal privileges of citizens, in such matters, against usurpations by the national courts? If that is what they assert, then I have only to say, that they are advancing an entirely new doctrine.

Mr. TOMES. At the time the section was before the Committee of the Whole, this same amendment was offered and very fully discussed, and the Convention then very decidedly expressed its convictions upon the subject. I hope, therefore, that no more time will be taken up in discussing it a second time, and I trust that the motion to reconsider will not prevail.

Mr. McCLINTON. I hope, for two reasons, that this section will not be reconsidered. One reason is, that I desire to economize time as much as possible, and the other is, I think that the proposed amendment is radically wrong. I indorse the remarks of the gentleman from Ormsby, (Mr. Johnson,) upon this subject. It is an experiment, which I do not think, in the present state of our society, and the present condition of our affairs generally, we are warranted in trying. I believe it would be placing too much power in the hands of one man, and especially, in a new country like ours, where at best the laws are comparatively badly administered. I, for one, certainly feel that the experiment would not be a safe one. The man whom we might be called upon to invest with this power, must often, of necessity, be one whom we do not know, at the time of his election, to be a proper man to trust. I hope the Convention will not recommit the section.

Mr. JOHNSON. I do not desire to occupy needlessly the time of the Convention, but I find myself placed, by the remarks of the gentleman from Washoe, (Mr. Nourse,) in a position which seems to require some explanation, and it is to that only that I propose to address myself at the present time. I occupy substantially the same position in regard to the action of the Convention on this subject that the gentleman from Washoe does. With that frankness which I intend to evince, not only on this, but every other subject which arises here, I had conceded the proposition of the gentleman from Nye, (Mr. Proctor,) that the provision of the Constitution of the United States which had been referred to, applies to such offenses as are committed against the laws of the United States. I believe yet that I was correct in that conception. The objection suggested by the gentleman from Washoe arises, possibly, from the difficulty of determining what constitutes a jury. Under the Constitution of the United States, and under the Constitutions of most of the States—probably every State in the Union where the right of trial by jury is provided for, (and I think such is the case in every State of the Union,)—resort must be had for construction to what is understood by the common law right of jury trial. Twelve men are required, or considered to be, under the common law, a jury, and in the case to which the gentleman from Washoe referred, it would be necessary, under a constitutional provision simply declaring that the right of trial by jury shall remain inviolate, that resort should be had to that common law rule in order to ascertain and determine what number constitutes a jury. There is no doubt in my

point of the correctness of the application of this rule. The person was entitled to a jury trial under the Constitution, and under the common law rule that jury must consist of twelve men; and the defendant could not, under the Constitution of the State, or the laws of the State, be prevented from that constitutional right. But, sir, I know of no decision in which particularly and specifically the matter has arisen, presenting the question as to whether or not the Constitution of the United States applies to all, or only to offenses cognizable under the laws of the United States. But this I do know—and I refer to it merely to show that other and abler men than I have entertained the same views that I have advanced on this question—that in the Convention of 1851, which framed the present Constitution of the State of Indiana, the same position was assumed in regard to the question, and sustained by jurists, men of unquestioned ability, who were members of that body. My present recollection is, that it was assumed in that Convention that this provision of the Constitution of the United States applied only to offenses committed against the laws of the United States, and that the Convention, therefore was not circumscribed or limited by the provision of the Constitution of the United States; and my present recollection is, further, (and it is confirmed by examining the Bill of Rights as adopted by the Convention of 1851, which framed the present Constitution of the State of Indiana, for you will find in that Bill of Rights no declaration of that character, providing that no person shall be held to answer, unless by presentment or indictment by a grand jury,) that the Convention took the same view of the matter, and provided for carrying into effect some of that character, in regard to offenses against the State laws.

Mr. DuLONG [interrupting]. I desire to suggest that it cannot be in order to entertain this motion to recommit at this time, for the reason that a motion has already been made and carried to recommit the article, with instructions to amend another section, that motion treating the whole article as an entirety. In that view of the case, the article is not properly before the Convention.

The PRESIDENT *pro tem.*—(Mr. Fitch in the chair.) The Chair thinks that the motion of the gentleman from Nye was to recommit this section to the same committee.

Mr. DuLONG. But the whole article has been recommitted, with instructions.

The PRESIDENT *pro tem.* It is competent, in the opinion of the Chair, for the Convention to instruct the committee, and this motion is in the nature of a supplementary instruction to the committee.

Mr. DuLONG. If we are treating this article section by section, then I think it is too late to amend Section 8, because we have already proceeded as far as Section 12; and if we are not treating it by sections, but as an entirety, then the whole article was recommitted by the former motion, and is not, therefore, before the Convention. I make that point of order.

The PRESIDENT *pro tem.* The Chair understands the gentleman's point of order. The Chair holds that the whole article was under consideration, as an entirety, and not section by section. After the article had been recommitted, the gentleman from Nye made his motion, which the Chair treats as a supplementary instruction to the committee; which, in the opinion of the Chair, it is quite competent for the Convention to give. The Chair therefore decides the point of order not well taken.

Mr. JOHNSON. I will say, in addition, only this—that I have no knowledge as to how the experiment has worked in the State of Indiana, where the system has prevailed which is contemplated by this amendment (as it possibly has, also, in one or two other States—I do not now recollect, or know how many others have adopted it.) But it was only on the constitutional question involved that I desired, at this time, to address myself to the Convention, because, when I previously occupied the floor, I allowed that question to pass in a few words, with barely an indorsement of the position of the gentleman from Nye. Nevertheless, I am opposed to the amendment, as a matter of policy, because I think it would be unwise and impolitic for us, at this time, to attempt such an experiment.

Mr. DuLONG. As my point of order has been decided not well taken, I desire, Mr. President, to ask a few questions, for information only. First, I desire to inquire how we can commit a thing which has already been committed? and, second, inasmuch as the motion of the gentleman from Nye is to recommit the article to a committee of five, and it has already been recommitted to a committee of three, which committee will get it, if the present motion prevails?

The PRESIDENT *pro tem.* The Chair did not so understand the motion of the gentleman from Nye; and furthermore, the Chair is informed that the article is not yet in the hands of the committee to which it was referred by the first motion.

Mr. DuLONG. But the motion to recommit was put and carried.

Mr. JOHNSON. I hope the gentleman from Storey will not insist upon his point of order, because probably it will save time to settle the question in its present condition before the Convention.

Mr. DuLONG. Very well; I will withdraw my point of order upon the motion, although I still do not think it is in order to make one motion to recommit on the top of another.

The question was taken on Mr. Proctor's motion to recommit, with instructions, and it was not agreed to.

THE THREE-FOURTHS VERDICT.

Mr. DUNNE. I desire to move a further supplementary instruction to the committee.

I move to instruct the committee to which was recommitted Article 1, to amend Section 2 of said Article, by inserting in the proviso, after the words "by a two-thirds vote of," the words "all the members elected to," so as to read:—

"Provided, The Legislature, by a law passed by a two-thirds vote of all the members elected to each branch thereof, may receive a unanimous verdict, notwithstanding this provision."

I have made that motion for the purpose only of bringing this question before the Convention. We have heretofore adopted a provision, that any and every law must have a majority vote of all the members elected to each branch; and it seems to have been the intention of the Convention to require, for the purpose of making the change contemplated in this proviso, something more than the vote required to pass an ordinary bill. Now, if you will refer to the apportionment made for last year—and the apportionment may be the same for this year—you will find that the Senate is composed of seventeen members, a majority of which number will be nine members, but unless the words I propose to insert are adopted, merely a two-thirds vote of a quorum might make this important amendment, provided that two-thirds vote constituted a majority of all the members elected; and therefore there would practically be no distinction between the number of votes required to make the alteration contemplated in this proviso, and the number of votes required for passing any ordinary law. But if, by my amendment, we require a vote of two-thirds of all the members elected, then it would be necessary to obtain twelve votes out of the seventeen to make this change, instead of, as the section now stands, only a two-thirds vote of all the members present, provided that two-thirds constitutes a constitutional majority. If it be the desire of the Convention to require a larger vote to make this change than to pass any other bill, then I think it must be obvious that this amendment is necessary.

The question was taken on Mr. Dunne's motion, and on a division, it was agreed to—ayes, 17; noes, not counted.

PARAMOUNT ALLEGIANCE.

Mr. DUNNE. Now, I desire to call the attention of the Convention to the wording of Section 2 of this Article. It says in that section, as it now stands:—

"But the paramount allegiance of every citizen is due to the Federal Government, in the exercise of all its constitutional powers, as the same have been or may be defined by the Federal Judiciary; and no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith, or perform any act tending to impair," etc.

I conceive that a point is involved here which agitates the minds of men all over the Union at this time, and that is, whether or not the people of a State have a right, by their own action, to determine the existence of the State, as a State of the Union. As this clause now reads, I do not think it touches that point. It simply says that the people of the State have no right to dissolve their connection with the people of the United States, or to subvert the authority or the acts of the Government of the United States. That does not reach the case of the act of a State providing for its own secession, as a State, because, if the doctrine advanced by many statesmen of the Union is correct, and I believe it is, then if a State, by legislative enactment, or by the action of a convention of the people, such as is here assembled to-day, shall choose, subsequent to the adoption of their Constitution, to meet and repeal that Constitution, they may thereby determine their existence as a State. Or, in other words, it is held that the same power which creates a State Constitution has the right to destroy that State Constitution, and end the State organization. Now, under this section, as it is worded here, the position is untenable, that the people have a right to destroy the State organization, and the only limitation is the declaration that they have no right to sever their connection with the United States.

Mr. DeLONG. How does the gentleman wish to amend it?

Mr. DUNNE. I do not wish to amend it; I only wish to call attention to the fact—for it is a question which is now agitating the whole Union—whether or not the people of a State may meet in convention to rescind a Constitution previously adopted. I believe that if the people of a State do so much as act, it destroys the State Constitution and the State organization altogether, but it still undoubtedly leaves them, as a people, under the Government of the United States, and in the same position, in respect to that Government, that they were in before their organization as a State. That is the only doctrine, as I understand, which is contemplated in this section, upon a strict reading of it; because, if it be the design to say that the people cannot sever their connection with the State, or destroy the organization of the State, then every one who has studied Lindley Murray knows that the word "its" should be substituted for the word "their," so as to read:

"No power exists in the people of this or any other State of the Federal Union to dissolve its connection therewith."

Of course they cannot destroy their connection, because they are part of the Union; but if we mean that there is no power to destroy the existence of this State, as a State in the Union, then we must strike out the word "their," and insert the word "its."

[The PRESIDENT in the Chair.]

Mr. NOURSE. Let us see if the gentleman is giving the correct interpretation. I have never observed it before, but it strikes me that, as it stands, it only prevents the people from severing their connection with the State. Let us see how it will read, leaving out the disjunctive, and filling up the ellipsis:—

"No power exists in the people of this State, or power exists in the people of any other State in the

[illegible] to dissolve their connection therewith."

—It seems to me it only limits the power of the people of the State in regard to dissolving their connection with the State; therefore, I would like to make the amendment suggested by the gentleman.

Mr. DUNNE. I am satisfied with the language of the provision as it is; but I think that members of the Convention have not generally noticed it. When it says, "No power exists in the people of this State," etc., it is referring to the paramount allegiance due to the Federal Government. It says, "The paramount allegiance of every citizen is due to the Federal Government," and then it goes on to say that there is no power in the people of this State to dissolve their connection therewith; and it goes on further to add, "or performing any act tending to impair, subvert, or resist the supreme authority of the Government of the United States." I think that it refers entirely to our Federal relations.

Mr. DeLONG. I think the section is right as it stands. I have always regarded the Federal Union in the light of a contract between two parties, and neither the State nor the people of a State have the right to destroy that contract, without the consent of the Federal Government.

Mr. NOURSE. This first clause—"No power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith"—that is, with the State, as it seems to me to read—I think is right, as far as it goes. Then the next clause—"or perform any act tending to impair, subvert, or resist the supreme authority of the Government of the United States"—seems to me to cover the other matter, as to their connection with the Federal Union, so that the whole section looks to me to be right as it now stands.

Mr. DUNNE. But there is nothing in it to deny the power of destroying the existence of a State as a State. There is nothing whatever in it which says that the State can not terminate its State existence, while continuing to express loyalty to the General Government, and a desire to continue as a people under the General Government. There is nothing in it which reaches acts of secession regarding the existence of a State. Provided a country has once been erected into the attitude of a State, there is nothing to prevent its returning to the condition of a Territory.

Mr. NOURSE. Would not that be in contravention of the first clause, which says, "they shall not dissolve their connection therewith"—that is, as a State? And, secondly, if the people undertook to secede as a State, would not that be an act tending to impair the authority of the United States, which is prohibited in the following clause? It seems to me that both are included. First, they cannot abrogate their Constitution as a State, and in the next place, they cannot impair or subvert the supreme authority of the Government of the United States.

Mr. DUNNE. I desire to make no change, and unless some one else does offer an amendment, there is nothing before the Convention on that point.

The PRESIDENT. This colloquy has been a little out of order, of course, but supposing it to be with a view to proposing some change, the Chair has tolerated the discussion. The article is now in the hands of the committee charged with the duty of making amendments.

Mr. DUNNE. I wish to make an explanation, in order that a reconsideration may be had, if necessary. It is usual, I think, when a subject is referred, that it should go into the hands of its friends, and for my part, I should be opposed to making the report required by the supplementary instructions of the Convention.

The PRESIDENT. Will the gentleman allow me to correct him? The further instructions to which the gentleman refers, were not adopted.

MEMBER QUALIFIED.

Mr. J. W. HAINES, Delegate elect from Douglas County, having taken and subscribed the oath of office, took his seat as a member of the Convention.

REPORT.

Mr. DUNNE, from the special committee to which was referred Article I, with instructions to make certain amendments, reported the same back to the Convention with amendments in accordance with such instructions, as follows:—

Amend Section 3 of said article by inserting in the proviso between the words "of" and "such," the words "all the members elected to;" also amend Section 19 of said article by adding thereto the words "no person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or on confession in open court."

The question was taken on adopting the amendments reported by the committee, and the amendments were adopted.

The question recurred on the final passage of the article, as amended.

Mr. DUNNE. I suggest that Sections 3 and 19, having been amended, should, perhaps, be reengrossed. I suppose, however, that there will be no difficulty in considering them engrossed at this time, and placing the article on its final passage. I will therefore move that Sections 3 and 19 be considered engrossed.

The question was taken, and the motion was agreed to.

The PRESIDENT. The question is now on the final passage of the entire article.

PARAMOUNT ALLEGIANCE—AGAIN.

Mr. FRIZELL. If the President please, and with the leave of the Convention, I would like to make a few remarks on this second section. My reasons are, that if the remarks which have been made by the gentleman from Humboldt, (Mr. Dunne,) should be reported, and go out into the community, they might create some

misunderstanding; and it is well for us all to thoroughly understand this article, if we can possibly arrive at a correct conclusion as to its meaning. I will not occupy more than three minutes time. ["Leave! leave!"]

The language here used is—

"All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. But the paramount allegiance of every citizen is due to the Federal Government."

Now, Mr. President, I take it that this first part of the section applies to the people of the United States. Then in the latter clause, as read by me, it applies to the people in their individual capacity, in their allegiance to the Federal Government. "But the paramount allegiance of every citizen is due to the Federal Government." Then gentlemen will notice that this language follows:—

"And no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith."

Now what is the meaning of that language? It is treating there of the people in their aggregate capacity—their corporate existence as a State—not as individuals. In the first place, as the section reads, it applies to the whole people as a nation—the whole people—and in the next place, Mr. President, it defines the personal and individual allegiance of the citizen to the Federal Government. We say here, sir, as I understand it, in language as concise and well defined as we could possibly obtain in the English language, that under our particular system and theory of government—which is as strong and perfect as it can be made—"No power exists in the people of this or any other State of the Federal Union"—(evidently, sir, referring to the people in the capacity of a State or in their corporate, or aggregated existence)—to dissolve their connection therewith. That is my understanding of the matter, and these are the only remarks which I desired to make on the subject.

The question was taken by yeas and nays on the final passage of the article as amended, and the vote resulted—yeas, 28; nays, 1—as follows:

Yeas—Messrs. Banks, Brady, Bruton, Chapin, Collins, Crockett, DeLong, Dennis, Fitch, Fitzhugh, Folsom, Gilmer, Hansen, Hawley, Hervey, Hudson, Kinkead, Lockwood, Mason, McClanahan, Murdock, Nourse, Parker, Sharkey, Tagliabue, Toner, Wetherill, and Mr. President—28.

Nays—Mr. Proctor—1.

So the article was passed.

Mr. PROCTOR. I would like to explain my vote on this article, if there is no objection. I have been compelled to vote against the whole article on account of the latter clause of Section 2, in relation to paramount allegiance; and I have voted against it also on account of the amendment of the jury system, by which it is provided, in Section 3, that a verdict may be rendered in certain cases by two-thirds of the jury. I voted against it, also, on account of the innovation in the grand jury system, in Section 8.

THE ENROLLMENT.

Mr. HAWLEY. I rise for some information. As Chairman of the Enrolling Committee, I feel particularly anxious to facilitate the completion of our work. I have been informed by a gentleman who is probably known to every member, and who is undoubtedly competent to judge, that it will require at least two days and a half to enroll the Constitution. It is important to have the work under way as soon as possible, but it is impossible for the Enrolling Committee to take any action upon it until the Committee on Phraseology shall have reported, so that we may know whether the ordinance shall precede the resolution, or the resolution the ordinance, and so on to the end. We cannot begin the work at all until we understand the order of proceedings.

Mr. CHAPIN. I move that so much of the Constitution as has been already finally passed be referred to the Committee on Phraseology, with the request that they report at their earliest convenience. I understand that, upon Article II, there is likely to be a considerable amount of discussion. I shall take no part in it myself, but I am satisfied that gentlemen will oppose several portions of it as it now stands, having been adopted in Committee of the Whole.

Mr. DeLONG. I suggest that the article which we have already passed, should be at once ordered enrolled.

Mr. KINKEAD. But the phraseology should be first attended to.

The question was taken on Mr. Chapin's motion to refer so much of the Constitution as had been finally adopted to the Committee on Phraseology, with instructions to report at their earliest convenience, and the motion was agreed to.

At five minutes before twelve o'clock, the Convention took a recess until one o'clock, P. M.

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AFTERNOON SESSION.

The Convention reassembled at one o'clock, and was called to order by the President.

QUESTION OF PRIVILEGE.

Mr. HOVEY. I rise to a question of privilege. When we had under consideration Section 1 of Article VIII, I moved to strike that section out, and I see by the report in the *Virginia Union* that I am represented as being opposed to banking institutions. I wish to be correctly represented in that respect. I am in favor of either giving the Legislature power to pass a general banking law, or of availing ourselves of the general banking law of Congress, establishing United States banking institutions.

The PRESIDENT. The gentleman's position will no doubt be corrected by the reporters.

COMMITTEE OF THE WHOLE.

Mr. DUNNE. I move that the Convention now resolve itself into the Committee of the Whole, the President remaining in the Chair, for the further consideration of Article VIII of the Constitution.

The question was taken, and the motion was agreed to.

MUNICIPAL AND OTHER CORPORATIONS.

The Convention accordingly resolved itself into the Committee of the Whole, (the President remaining in the Chair,) and resumed the consideration of Article VIII, entitled Municipal and other Corporations.

PACIFIC RAILROAD.

The CHAIRMAN. When this article was last under consideration in Committee of the Whole, the Committee had reached, and had under consideration Section 9, the question resting on an amendment offered by the gentleman from Storey, (Mr. Hovey,) to strike out the words "to the company that shall first build a railroad to the State line," and insert instead the words, "to some one railroad to be built." The gentleman from Ormsby (Mr. Lockwood) had also offered an amendment, to strike out all after the words "charitable purposes," that is, to strike out the entire proviso. The immediate question before the Committee will be the amendment proposed by the gentleman from Storey (Mr. Hovey).

Mr. HAWLEY. It may be, perhaps, a delicate suggestion, inasmuch as it may render me liable to be classed with those who are said to be desirous of wasting the time of the Convention, but still I will venture to make the suggestion, that the gentleman from Washoe (Mr. Haines) has expressed a wish to make some remarks in opposition to this Pacific Railroad portion, and his desire to close the debate upon the pending amendment. I would suggest to gentlemen, therefore, inasmuch as others have had an opportunity of expressing their opinions freely, that it would be no very great stretch of courtesy to allow the gentleman from Washoe that privilege.

The CHAIRMAN. The Chair will suggest that we could informally pass over this section.

Mr. FITCH. The gentleman from Washoe is not here at present, but I suppose he will, in due course, have an opportunity to express his views before the vote on the final passage of the article. I dislike to pass over our work, or to delay it because gentlemen do not happen to be present.

Mr. DUNNE. It is some time since the gentleman from Washoe expressed that desire to the Convention, and he certainly knew that this was the next business in order before us, and if he is so extremely anxious to express his views, he will naturally be here in time to do so; besides, he may have changed his mind on the subject.

The CHAIRMAN. The question before the Committee is the adoption of the amendment offered by the gentleman from Storey (Mr. Hovey).

Mr. HAINES. As I have not been here during the previous discussion of this subject, I desire to make a few remarks upon it. This is a question which was agitated and debated very fully in our last Convention, and I must say that I do not fully understand the amendment now proposed. I will therefore ask that the Secretary read the amendment again, or rather, that he read the proviso as it will stand with the amendment.

The Secretary read the proviso as proposed to be amended, as follows:—

"*Provided*, That the State may issue bonds, or assume the payment of principal or interest, or both principal and interest, of bonds, to an amount not exceeding three millions of dollars, at a rate of interest not exceeding seven per cent. per annum, on such terms as the Legislature may prescribe, to some one railroad to be built connecting this State with the navigable waters of California, or with the navigable waters of the Mississippi River; but no law to issue bonds shall be effective unless sanctioned by a vote of the people."

Mr. HAWLEY. I rise for information. I wish to ask whether the amendment does not contemplate a restriction of the issuance of bonds until the railroad shall be completed to the line of the State?—whether it is contemplated by this amendment to allow the bonds to be issued before the railroad is completed to the boundary of the State?"

Mr. HOVEY. The object of my amendment was, to give the Legislature a chance to make an appropriation for the building of a tunnel, if necessary, on any part of the road, even before it shall reach the line of this State; all that heavy work being understood to be west of the mountains.

Mr. STURTEVANT. My objection to that amendment would be, that it gives too good a chance for speculation. That is to say, the wording of it being, "to some one railroad to be built," nobody can tell who will get the appropriation. I cannot say, and no member can say which road will be built first, or which road will reach the State line soonest. Now, as I understand it, the object of this appropriation is for the purpose of encouragement—to shove along the road. The company which gets here first is to be considered the best fellow, and that company, it is supposed, will stand the best show of securing the appropriation. If that were really the case, there would be no chance for speculation about it; but the company getting here first would be entitled to, and would receive, the appropriation authorized in this Constitution. But according to this amendment, if it should prevail, my understanding would be that the appropriation will be made to some road to be built thereafter. Now we all have had some experience, undoubtedly, in these things, and we know that strong influences are brought to bear in the Legislature. Heavy log-rolling is done in pretty much every

Legislature, and this appropriation would very possibly be given to some company—there is no knowing who would compose it, nor when that company would accomplish the work. That is my understanding of the amendment offered by the gentleman from Storey, and that is my especial objection to it.

Mr. HOVEY. I look upon our position here as being somewhat like that occupied by the city of Buffalo, in respect to the Great Western Railroad in Canada. In order to tap that road, so that the city could receive the benefit of it, they appropriated six hundred thousand dollars, and they laid every dollar of that appropriation out in the province of Canada; and yet there is no doubt that it was a good investment for the city of Buffalo. Now, we may find ourselves in the same position in regard to this tunnel, or deep cut, whichever it may be, by which this road is to cross the Sierras, and it is for that reason that I propose to give the Legislature a chance to subscribe towards the work, or rather, to give the Legislature the power to allow the people, by their votes, to say whether they will give one million, two millions, or three millions, towards building this railroad.

Mr. BANKS. I had prepared an amendment embracing the same proposition, substantially, as that embodied in the amendment of the gentleman from Storey, (Mr. Hovey;) but as his was introduced before I had a convenient opportunity of offering mine, I intend to support his amendment, and for reasons which I propose, very briefly, to state. I cannot hope to change the opinions of gentlemen of this Convention upon this subject, because many of them have, doubtless, devoted much more time and attention to it than I have; but I deem it proper, nevertheless, that I should present to their consideration the reasons which will actuate me in voting, perhaps in the minority, upon this question. The proposition before us seems to me to be plain. I have no disposition whatever to disguise this question in order to secure the passage of the amendment under consideration, upon anything but a square, straight-forward basis, and a distinct understanding as to the issues involved.

Gentlemen here have boldly proclaimed that we ought to do nothing for the Pacific Railroad that does not involve the expenditure within the limits of our own State of the entire amount which may be appropriated. Now, sir, for one, I am in favor of giving as much as we can in aid of this work, without restricting the expenditure to our own Territory, or within our borders. What we desire most of all is, to secure the construction of the railroad to our borders, and as far within them as is practicable, in the shortest space of time. I lay this down as a proposition that no one in this Territory can controvert, that whatever may be our financial condition, however unable we may be at this time to pay heavy taxes, however poor in all respects we may be, it is certainly beyond question that we are too poor to do without a railroad for any great length of time. Surely there never has been a community in the civilized world, and I do not think there ever will be, that can afford to pay for all it consumes ten cents or more per pound. If we were as rich as the wildest imagination ever conceived, we could not afford to pay six millions, or even five millions, annually, for the transportation across the Sierra Nevada Mountains. The Pacific Railroad is, therefore, something which has become as indispensable to our existence, almost, as the air we breathe. We cannot afford to pay any such tax on freight as we are now and have been paying, and the only way by which we can avoid it is to secure the construction of this Pacific Railroad, at least to the eastern slope of the Sierra Nevadas. Once complete the railroad to the mountains, and then there is nothing to prevent us from securing the advantages of cheap transportation, because we shall have a very easy grade down hill; and we may, if we choose, roll down our barrels of produce, or slide down our boxes of merchandise and machinery. Get the railroad through to the summit, and not only do we have on this side an easy grade, that will almost admit of the construction of the rest of the road by the appropriation made by Congress, but we have also secured railroad communication to a point where the necessity will be greatly diminished.

Now, Mr. Chairman, this amendment proposed by the gentleman from Storey, contemplates that the Legislature of the State of Nevada may, in its discretion, and with the sanction of the people, appropriate money or issue bonds for the construction of this railroad, and also that the Legislature may provide that such appropriation shall be expended wherever in their judgment is best and most appropriate, or where it will best secure the early transportation of freights to this State at cheap rates. The heaviest work, it is notorious, is on the other side of the State line. There the most expensive tunnels are to be bored, there the heaviest grading is to be done, and there the most costly bridges are to be built. Any person who has examined the reports made to this railroad company knows very well that when once the railroad reaches the State line, this State will not necessarily be required to furnish any aid in building it on this side, in addition to the amount appropriated by the Government of the United States. If, therefore, we desire to overcome the great difficulties, the chief obstacles in the way of this work, at the earliest practicable period, let us leave this provision of the Constitution in such a way that the Legislature may, in its wise discretion, contribute the money where it is most wanted, and not wait until the railroad is completed to a point which will place it beyond the necessity of our aid. I hope the Convention will adopt the amendment.

Mr. HAWLEY. I wish to suggest that the

amendment offered by the gentleman from Storey does not, as I conceive, fully cover the ground. It does not, in my judgment, guard the interests of the State, in the best manner, to secure the best application of the appropriation to be made. If I am correctly informed, there are rival companies which will be likely to strain every nerve to secure, beyond the possibility of forfeiture, the appropriation which the Congress of the United States has given, or provided to be given, to the company which shall first comply with the terms upon which that appropriation depends.

Mr. BANES. Will the gentleman give way for a question?

Mr. HAWLEY. Certainly.

Mr. BANES. I wish to ask, for my own information, and perhaps that of others, whether Congress has really made any appropriation that can be availed of by anybody except this Central Railroad Company? Is there any prospect of any other company whatever securing the appropriation made by Congress?

Mr. HAWLEY. That has been a question in my own mind. I may be misinformed on the subject, and entirely in the dark in relation to it, but I am told that there is another company now striving to get it.

Mr. BANES. I do not know anything about it; that is why I asked the question.

Mr. HAWLEY. That is the case, if I am correctly informed, and if not, I wish to be set right. What I wish to suggest is, that we should so pass this provision in such a form as to restrict it to one company. I have no objection to granting aid to the company that is going to build the road before they get to the State line, but I think it would be almost a suicidal act to pass this amendment and leave the provision in such a form as to allow those rival companies to lobby for it (to use the expression of the gentleman from Washoe) in the Legislature of this State. If such a condition of affairs does exist, I suggest that it would be suicidal to pass the amendment, unless the Legislature is restricted to granting aid to that company which shall receive the benefits of the grants and donations made by the Government of the United States. If the assertion made to me, that there is a rival company, has no basis of fact; if there is no rival to this Pacific Railroad Company, then it amounts to nothing; but if there is such a rival, it of course amounts to a great deal.

Mr. HOVEY. I think by the time the people are called upon to vote upon this question, they will have become satisfied as to which road they want to grant the appropriation to—whether to the Central Pacific route, or to the Placerville route.

Mr. FITCH. I was at first inclined to support the amendment offered by the gentleman from Storey, (Mr. Hovey), but on reflection I have concluded to oppose it, and one reason for such opposition is, that it is my desire that the prosperity, and the glory, and the prosperity, and the enlightened and blessed institutions of Nevada generally, shall be extended over as large an area as possible. Now, sir, if we pass this section in such a form as to declare that aid shall not be extended to the Pacific Railroad until it reaches the State line, then, there being a necessity for doing a large amount of grading, and other heavy work west of that line, as at present surveyed, we are, in effect, offering an inducement to the California Legislature—which they will no doubt see in an instant, and in view of which they will probably not hesitate to act—to move the State line sixty miles over towards the Pacific Ocean. [Merriment.]

The question was taken on Mr. Hovey's amendment, and it was not agreed to.

Mr. DELONG. I move to amend the section by striking out all after the words "Mississippi River" in the proviso, and substituting the following:—

"And provided further, that such railroad company shall expend the said amount of three millions of dollars for the further construction of said road within the borders of this State; but no law to issue bonds hereby authorized shall be effective, unless sanctioned by a vote of the people at a special election called for that purpose."

Now, Mr. Chairman, that amendment contains but two ideas; one is, that the three millions of dollars shall not be donated on the bonds issued for that amount, except for the building of a railroad in this State—that is, whenever the company shall have expended three millions of dollars for the railroad, then it will be entitled to the three millions in bonds. The other idea is, that the vote upon the subscription is to be taken at a special election, called for that purpose, so that the question shall not be blended with more important questions, or lost sight of in the excitement of a general election, involving a strife for County and State officers. The consequence of such a provision would be, that whoever should vote for the appropriation would do so knowingly, and thus we should obtain a correct expression upon that vote. It is true that that arrangement is subject to the objection that there will not be so large a vote polled as there would be at a general election, but it has also the merit that every one who votes at all, will vote directly on this one proposition.

Now, as to the first proposition, I have argued it heretofore, and I do not care about again presenting my views upon it. I think if we leave this section so as to allow the Legislature to make this appropriation of three millions of bonds, without any restriction, the first Legislature we have will find itself besieged by the emissaries of the companies engaged in lobbying through the appropriation, and no doubt successfully. Then the next movement will be to have the bonds issued immediately, and doubtless they will succeed, also, in that; and before we get a railroad within thirty-five or forty miles of our borders, these three millions in bonds will all have been issued. Now, the State is poor, having very little taxable property. These bonds, we must bear in mind,

are to bear so low a rate of interest that they cannot be sold here, of course, but will have to be sold in New York, or in Europe, and for such currency as may then and there be in use. The currency may at that time be more depreciated than it is to-day, and bearing this small rate of interest of seven per cent., I do not imagine that our bonds would really bring, in gold, more than twenty-five cents on the dollar, so that out of an appropriation of three millions of dollars, the company would derive the actual benefit of only about one-fourth of that amount. Nevertheless, we should find ourselves three millions of dollars in debt, upon which we should be obliged to pay seven per cent. interest annually, with very little indeed in the way of taxable property from which we can derive a revenue to meet it. Now, it strikes me that three millions of dollars, granted after the construction of the road to our own borders, will be just as beneficial to the company as it would be if the same amount were appropriated to be applied for the completion of a road which lies wholly in the State of California, if they are ever coming here with it at all. Besides, we should, in that event, be holding out a powerful inducement to the railroad company to push the road through, and not merely to get it up to the heavy grades in California, and there stop. It makes it an object to come beyond that difficult point, and they will build their road on as cheap and economical a plan as will promise to pay, and push it through as rapidly as they can, so as to get their reward. They will get the appropriation, too, at a time when the State, by the building of the improvements which will be made to connect our mines with water power, will be teeming with industry, when there will be tenfold more of taxable property than there is now, and consequently the bonds will be so much more saleable and available in market. I do not like the idea of the gentleman from Humboldt, (Mr. Banks,) of sliding down our boxes and rolling our barrels down the mountains; and I venture to say, that when the railroad reaches that point, we shall very soon obtain, as the democratic platform said in 1856, "speedy and easy communication across the plains," though that, I believe, was supposed to refer to the celebrated camel route—President Buchanan's Pacific Railroad.

Mr. STURTEVANT [in his seat]. Do you refer to the Woolly-Horse route?

Mr. DELONG. No, sir, it is our own platform that I am referring to. I remember that I used to talk in favor of it, very frequently, on the stump. Now, I say, as I said the other day, that although I was misunderstood or misrepresented then, as being opposed to the Pacific Railroad, yet I do not believe there is a man in the world who is more in favor of it than I am. I see the promise of prosperity, and strength, and growth, on every side, in its construction and I am as desirous of seeing it completed as any man in the world can be. But, for one, I say that if we are going to expend this money, I would like to see it applied to building that part of the road which is to be constructed between here and Virginia City, and, so far as the money would go, towards Lander County. I think that might be done to advantage, on the route of this railroad, and thereby give us a road which will enable us to reach that chain of mountains which now cuts us off entirely from the outside world. That would unlock our resources, giving us access to water power, and supplies of wood, the want of which our enterprises are now withering. I hope gentlemen will not insist on forcing upon us the burden of building the road before we are able to bear it, and that they will allow us to reap some benefit from the appropriation, whenever it is made.

My colleague (Mr. Fitch) has just shown me an amendment which I am willing to substitute in place of my own. It is a substitute for the whole section. It suits me very well, and if there is no objection, I will ask that it be read.

The SECRETARY read as follows:—

SEC. 9. The State shall not donate or loan money or its credit, subscribe to, or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes; *Provided*, that the State may issue bonds, or secure the payment of principal or interest, or both principal and interest, on bonds to an amount not exceeding three millions of dollars, at a rate of interest not exceeding seven per cent. per annum, in sums not exceeding twenty-five thousand dollars per mile, for each mile of railroad actually constructed within the boundaries of the State of Nevada, on such terms as the Legislature may prescribe, to the company that shall first complete a railroad to the State line, connecting this State with the navigable waters of California, or with the navigable waters of the Mississippi River; but no law for issuing bonds shall be effective unless sanctioned by a vote of the people at a special election to be called for that purpose; *and further provided*, that any such law, to be so submitted, shall therein provide for levying and assessing a special tax for the payment of the principal and interest of said bonds.

Mr. DELONG. That last proviso was just handed to me. I offer it all together, in place of my own amendment.

Mr. STURTEVANT. With the permission of the gentleman from Storey, I would say that there is one part of that amendment which I would heartily indorse, but the other part of it I do not like very well.

Mr. DELONG. I will withdraw that amendment temporarily, then. What I want, is to get these two ideas embraced—first, that the money we appropriate shall be expended for the road in our own State; and second, that the appropriation shall be submitted to the people, at a special election to be called for that purpose. I have talked already as long as the *Evening Herald* will willingly allow me to, and therefore I will now leave the subject.

Mr. CHAPIN. I have only one objection, Mr. Chairman, to these various amendments. If gentlemen will only lay them aside until the meeting of the State Legislature, and until that Legislature is called upon to act in this matter, then their amendments will all be in proper place, and deserving of careful consideration.

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will be the proper time to impose these restrictions, and to raise these objections. I see we are falling back into that error of the former Convention, which the people so emphatically condemned, of legislating too much in this organic law. Now, I say, let us abide by this section, nearly or quite as it is presented to us in the Old Constitution. I have no serious objection to some of the amendments which have been offered by gentlemen, if it were only proper to introduce them here. But I regard them as highly improper in our Constitution. That is no place for them. The people were disgusted with the numerous legislative provisions which were incorporated in the old Constitution, and I say, do not let us commit the same error in this Convention. I do not think all wisdom will die out with this body; I think some of it will be left in the Legislature to convene hereafter, and there let my friend and colleague present his amendments and his arguments.

Mr. DeLONG. If my colleague will assure me that he will be in that Legislature, and there ready to carry out these ideas, I will do it.

Mr. CHAPIN. They are not very objectionable as legislative provisions.

Mr. DeLONG. Then, why not put them in now, because we may not be in the Legislature?

Mr. BROSNAN. I suggest that we vote on the amendments which are now pending, before we offer any more, in order that we may not get the subject too much complicated.

Mr. DeLONG. I will renew my amendment, striking out the last proviso.

The question was taken on Mr. DeLong's amendment, as last modified, and, upon a division, the vote stood—ayes, 13; noes, 13.

Mr. DeLONG. I hope the Chairman will vote.

The CHAIRMAN. The Chair is satisfied that all the members present have not voted.

Mr. BROSNAN. If the Convention will allow me, I desire to suggest that I am rather in favor of my colleague's amendment, but I vote against it for the reason that it limits the expenditure to twenty-five thousand dollars per mile; and, besides, I think there is no necessity for a special election, which is always a great expense and trouble.

Mr. DeLONG. I think my colleague misunderstands the effect of my amendment. The entire three millions are to be voted for at one time, but the bonds are to be issued only at the rate of twenty-five thousand dollars per mile, as the road progresses. The three millions are all voted at once, and then the bonds are to be issued as fast or as often as the company brings in proof that they have got one or more miles completed. When they get to the end of each mile they present their vouchers, showing that they have got a mile finished, and draw their twenty-five thousand dollars' worth of bonds.

Mr. PRUZELL. I voted against the amendment of my colleague for this reason: I approve most heartily of the ideas intended to be carried out or established by his amendment, but I think there is too much legislation in it; that matters are embraced in it which properly belong within the province of the Legislature. I do not think we can do better than to take the original section, amend it, by adding that the money so appropriated shall be expended within the limits of the State, and then pass it, leaving all the rest to the Legislature. I hope that all these amendments will be voted down, and that then we shall add those few words to the section, and let it stand.

Mr. FITCH. I will say that my private opinion is in favor of not limiting the expenditure to this State, but rather to allow some portions of the appropriation to be expended in California, if necessary. I agree generally with the views of my colleague from Storey (Mr. Hovey) on this subject. But I am satisfied that nothing of that kind can pass this Convention. I suggested this amendment to my colleague (Mr. DeLong) as the only thing which, in my opinion, is likely to get through here, in order that we may have a vote upon it, and let the question be settled.

Mr. DeLONG. It has been suggested that the appropriation of twenty-five thousand dollars per mile might perhaps carry the railroad beyond our own limits. I would like, therefore, to modify the amendment by striking out "twenty-five" and inserting "fifty," so as to allow the company to draw fifty thousand dollars for each mile.

Mr. FITCH. That would build the road, and stock it, too.

Mr. DeLONG. Not in all places.

Mr. FITCH. I understand that it has cost only thirty-two thousand dollars per mile to build the road from Sacramento out, as far as it has been completed.

The question was taken on Mr. DeLong's amendment, as last modified, and upon a division, it was agreed to—yeas, 16; noes, 11.

Mr. STURTEVANT. I offer the following amendment:—

"And further provided, that the said appropriation shall be derived from the sale of the public lands granted to this State by Congress for internal improvements."

We have, I believe, or will have, five hundred thousand acres of land which are granted to us by Congress, as soon as we become a State, for this very purpose of internal improvement. I do not know how it is with the other members of the Convention, but I do not wish to be taxed, at least until we shall have first used up what means we have.

Mr. DeLONG. It is true, Mr. Chairman, that by an Act of Congress, passed in 1844, every State then in the Union, and all which should subsequently become States in the Union, were granted, or upon their admission, to be granted—for it has been held to operate as a grant—five hundred thousand acres of land each, for purposes of internal improvements. And it strikes me, as suggested by the gentleman from

Woolen, that it is extremely proper that these lands should be made use of for purposes of internal improvements—that they should be sold, and the proceeds applied to a fund from which to pay this appropriation before the people are taxed for it. I am not strenuous about it, but I shall vote for this amendment upon principle.

Mr. CHAPIN. It occurs to me that there are at least two serious objections to that amendment. One is, that the money to be derived from these lands cannot be made available speedily for the benefit of this road, and that is a matter which is of the utmost importance to us. The other serious objection is, that if we attempt to force that land into the market now, we have got to sacrifice lands, which in time, would become very valuable. We had better keep that land until it is wanted, and let us make a manly, prompt, and speedy appropriation to hasten along this road so that we may enjoy its benefits. To my mind, these are insuperable objections, and therefore I shall vote against the amendment.

Mr. NOURSE. I understand that this amendment provides the funds from which these bonds are to be paid. Now, do I understand that it is the idea of the gentleman who last spoke, that we must have a tax levied at once, sooner than we can derive any proceeds from the sale of those lands? I understand that this amendment provides, not for the bonds, but simply for the basis or fund from which they are to be paid. I am at a loss to perceive how there can be any objection to that.

Mr. CHAPIN. It provides that the appropriation shall be derived from the sale of the public lands.

Mr. STURTEVANT. I am sure there will be no difficulty in changing the amendment to meet the objection, because that is what is intended—that the funds to be raised from the sale of these lands shall be applied towards the payments to be made on these bonds.

Mr. FITCH. It seems to me that that is a distinction without a difference. It does not make any particular difference whether the money derived from the lands shall be devoted directly to the road, or to paying the interest on the bonds, or the bonds themselves issued in aid of the road, because, in the first place, we shall be obliged to wait a long time for the money, and in the second place, we shall be compelled to wait a long time for the sale of the bonds. Capitalists would certainly be disposed to wait a long time before they would buy bonds dependent for their payment upon the money to be derived from the sale of those lands. I trust that the opponents of the Pacific Railroad will not endeavor in this way to push it to the wall.

Mr. STURTEVANT. Oh, no; we are not opponents.

Mr. NOURSE. We do not understand it that way.

Mr. FITCH. There is a disposition here in the Convention to aid this Pacific Railroad enterprise, and at the same time, those of us who are friendly to it, desire to hedge the provision round with all necessary guards and restrictions. I trust that gentlemen will be satisfied with those guards and restrictions, and not try these little clever tricks, in order to defeat the provision altogether.

Mr. STURTEVANT. Now, this matter reminds me of one of Mark Twain's recent letters, where he says, "Now you see it, and now you don't see it." [Laughter]. In the first place, we do not know what we are going to do, for gentlemen will remember we have not got the Constitution through yet. I do not know that any one of these gentlemen who have spoken at such tremendous length has ever attempted to make it appear that this railroad is going to be of any particular benefit to that humble portion of this Territory which I represent, or to any of our "cow counties." I have no doubt it is going to be a great benefit to the mines. Well, I myself claim to be a miner, as well as a rancher. I have some few feet yet up in Storey County, and I maintain that this Pacific Railroad will be a greater benefit to the mining interests which I own there than to any other property I have in this Territory, and the quicker and more speedily that road is constructed the greater will be the benefit which it will confer upon that particular business. Still, I am rather under the impression that there is a chance for this provision to get knocked all to pieces, because in case the mines are not taxed, and nobody knows yet that they will be, then who is it, I ask the gentleman from Storey, that he proposes to call upon to pay for this railroad?

Mr. FITCH. I do not propose anything about it; I propose to let the Legislature see to that. Let us provide that the bonds may be issued, and then let the Legislature, if they do issue them, provide for their payment.

Mr. CHAPIN. And at a time, too, when we shall have fifty millions, and perhaps, even two hundred millions of taxable property more than we have to-day.

Mr. STURTEVANT. I do not know but it may turn out to be so, but the Territory, if that is going to be the case, has got to take a good rousing upward start, and that pretty soon, because just now everything seems to be going out at the little end of the horn. I do not know that we have much taxable property to-day aside from what there is in the cow counties, and a little surface property perhaps in Storey County. At any rate, as I said in the first place, the cow counties do not expect to be very greatly benefited by this railroad, and it would not look to me altogether fair to call on them alone to foot the bills for its construction.

Mr. FITCH. We shall have less property very soon, if we have to do without a railroad.

Mr. STURTEVANT. Very true; but Congress has provided that certain lands shall be given to us, to be devoted expressly to purposes

of internal improvements, and for one, I wish to see those lands used up in building this railroad, at least before we are specially taxed for it. I have sent up my amendment to this section with that object in view. It was rather hastily prepared, but perhaps it can be amended so as to suit everybody, and perhaps it had better be amended in some respects. I am not unreasonable by any means, and I have no objection to allowing any member to assist me when I undertake to make an amendment in this important document. I am in hopes that my amendment will carry, at least in some form that shall go to the extent of using up those public lands in paying the bonds, as far as they will go; then, after that, we can have a tax levied, in whatever way the Legislature shall see fit, because it will rest with the Legislature to make such appropriations as may be necessary to pay the bonds when they become due.

Mr. HAWLEY. Will the gentleman from Washoe allow me to read a proviso, which I think may possibly meet his views? In case this amendment is withdrawn, I propose to offer the following:—

"*Provided further*, That the sum so derived from the proceeds of the sale of the public lands of this State shall be set apart as a sinking fund for the extinguishment of the principal of said bonds; and provided further, that a special tax shall be levied for the payment of the interest of said bonds."

Mr. DELONG. I think the gentleman from Washoe cannot complain of that.

The CHAIRMAN. I suggest that it should specify the lands as those donated for internal improvements, because there are other lands granted by Congress for special purposes.

Mr. FITCH. If the gentleman will amend that proviso so as to say that the proceeds shall be set apart "towards a sinking fund," instead of "as a sinking fund," I will not object to it.

Mr. NOURSE. I do not see the necessity of that.

Mr. HAWLEY. I have no objection, because I believe the five hundred thousand acres will be sufficient to pay the whole amount. At the suggestion of the Chairman, I will modify the first part of the amendment, so as to specify the public lands set apart for internal improvements.

The CHAIRMAN. I understand that this is offered as a substitute, or, rather, in the place of the whole amendment proposed by the gentleman from Washoe (Mr. Sturtevant).

Mr. NOURSE. I would like to have the amendment proposed by the gentleman from Douglas read as it now stands.

The SECRETARY read as follows:—

"*Provided further*, that the sum so derived from the proceeds of the sale of the public lands granted to this State for internal improvement purposes, shall be set apart towards a sinking fund, for the extinguishment of the principal sum of said bonds; and *provided further*, that a special tax shall be levied to secure the payment of the interest of said bonds."

The CHAIRMAN. I will suggest that if the Constitution, in effect, says that this fund shall be derived from the sale of those lands, the Legislature would be inhibited from the levying of a tax for that purpose, in case that fund should prove to be insufficient.

Mr. HAWLEY. That difficulty suggested itself to my own mind, but it was mainly with the view of getting the question before the Convention that I proposed this amendment. If we adopt that idea as the basis of our action, we can perfect the phraseology subsequently, so as to avoid the apprehended difficulty. It certainly becomes incumbent upon this Convention, if it is expected that the State shall grant any aid to the railroad at all, if it is designed to place those bonds in the market in such a way as to give them any value in the world, to provide hereafter further means for the extinguishment of the debt to be created by their issuance. A person of a sanguine imagination might be led to believe, from the present value of our agricultural lands, that the sale of half a million acres of such lands, if they can be found in our State, would be ample to provide a fund for the redemption of these bonds; but that is a question on which gentlemen better informed than myself, as to all the capacities of the agricultural lands within our borders, may be expected to give their views. I am, and have been from the first, decidedly in favor of the retention of the original section, with some slight amendments; but these seems to be manifested a disposition, on the part of a portion of the members of this Convention, to throw every possible obstacle in the way of the passage of any section or provision in this Constitution which shall authorize the future Legislature, or give it any power to lend any aid whatever to the construction of the railroad. That disposition makes itself apparent, not only by direct opposition to every provision proposed to be engrafted into our Constitution looking to that end, but also by the exercise of parliamentary strategy, and every other means that gentlemen can bring to bear, to secure their ends. Now, I believe that many who opposed the original proposition were really in favor of the Pacific Railroad, but unfortunately there seems to be no disposition here to take hold together, and adopt something that will be practical and effectual.

Mr. NOURSE [interrupting]. Is there any question before the Committee?

The CHAIRMAN. The question is on the amendment offered by the gentleman from Washoe, (Mr. Sturtevant,) as amended by his subsequent acceptance of the amendment of the gentleman from Douglas (Mr. Hawley).

Mr. HAWLEY. I was stating my reasons for presenting this amendment, and I wish only to say, further—and with that I will close my remarks, and give gentlemen who are in the opposition an opportunity to reply—that it is my intention to move to provide further, in some way, for any additional appropriation which may be necessary to place these bonds upon a sound basis.

Mr. FITCH. If the gentleman from Douglas will insert in the latter clause of his amendment the words "principal and" before the word "interest," I think the objection suggested by the Chairman will be obviated. That will strengthen the provision, not weaken it.

Mr. HAWLEY. The suggestion meets my approbation, and I will modify my amendment by inserting those words.

Mr. NOURSE. I do not see the necessity of providing for any power in the Legislature, so far as the payment of these bonds goes. I waited a moment after this amendment was offered, in expectation of seeing my friend from Storey, (Mr. Chapin), who has such a "holy horror" of legislation, bounce up and protest against this legislative clause. Now, I understand that the power of a Legislature extends to all proper subjects of legislation, except so far as it may be limited by the Constitution of the United States, or the Constitution of the State, and if there exists a debt of the State of Nevada, will any gentleman say that it needs a special clause in the Constitution to authorize the Legislature to levy a tax to pay that debt? That would be a most unheard-of doctrine. The object of a special clause providing for a tax to pay the interest on these bonds is, as I understand it, to enable the people to know when they are voting for the issuing of these bonds, exactly what they are voting for—that they may understand that they who dance must pay the piper—and that if they vote for the appropriation, they must also take the necessary steps to pay the appropriation. It is not because it is in any sense necessary to give the Legislature power to levy a tax before they can proceed to levy that tax.

And while I am speaking of this amendment, I wish to say now and here, that I am opposed to this whole matter of loaning the credit of the State to any railroad, and I suppose I have a right to be. A most ungenerous charge was made, because I happen to be a representative of Washoe, and charged by the people of that county with the duty of representing their interests here—though I do not own a dollar's worth of property in that county, and, I am sorry to say, not in any other—that I do not want the railroad built to this State for fear it would help Storey County, and diminish the value of property in Washoe County. It seems to me that we have had enough of this child's play. If the arguments of gentlemen are not strong enough to stand upon reason, if their points are not to be carried by appeals to reason, then let them fall to the ground.

Now, it seems to me that this amendment is exceedingly proper, for the reason that it diverts into the channel, and compels the appropriation for the purpose of internal improvements, of the grant of land which was made by Congress for this very purpose of internal improvements. And, further, it will reduce the chances of the Pacific Railroad Company, or any other company, getting our lands for nothing. I care nothing more about the Pacific Railroad Company than any other, although all my impressions are in favor of that route as the only one over which a railroad is likely to be speedily built across the Sierras. But my objection is to this class of persons getting our bonds, when those bonds are compelled to be paid by heavy taxation imposed upon the people here, and then leaving this amount of money to be derived from the public lands to be granted to some other railroad company, perhaps, that may turn out to be only a wild-cat affair. It is in order that this grant of land by Congress may go to pay for the building, or at all events, towards the building of that road which we need the most, that I favor the amendment providing that all the proceeds of the sales of these public lands shall go to pay the bonds, if the Convention is determined that the bonds shall be issued at all events. As I said before, I shall vote to the last against issuing any bonds, and when the question comes up on striking out all in relation to these bonds, I shall endeavor to give fully my reasons in favor of the motion to strike out. I disclaim any intention to use unfair means to defeat this clause, so dear to the hearts of some gentlemen. My sole desire is to make it as little objectionable as possible, so that if it shall be carried against my convictions of right and sound policy, we may suffer as little as possible therefrom; and I still reserve the right to myself, of voting to strike out the whole provision, when the question comes up on that.

Now, Mr. Chairman, I repeat that I cannot see how it is necessary that the Legislature should have a specific grant of power to levy taxes to pay a debt which the State owes, when we have done nothing, that I know of, calculated to restrict the power of the Legislature in that respect. The Legislature, without any grant or restriction whatsoever, certainly has power to levy taxes to pay a debt of the State, and, as I understand it, the clause which provides that they shall pay the interest by a tax levied for that purpose, was inserted here only in order that the fact might not be lost sight of—that when the people come up and pay their dollars into the treasury, they shall know that so many of them are going to pay the interest on these bonds, which I predict will be called at that time, if it ever comes, stolen bonds, because that has been the history of all similar railroad grants.

Mr. FITCH. I agree with the gentleman from Washoe (Mr. Nourse) that it is unnecessary to give the Legislature power to levy a special tax to pay the principal of these bonds. I agree with him further, that it is unnecessary to give the Legislature power to impose a special tax to pay the interest on these bonds. I go even further, and say that it is unnecessary to place in this section of the Constitution a power to devote the public lands to that purpose. It is all unnecessary.

Mr. NOURSE [interrupting]. I believe it says the Legislature are required to do it.

Mr. FITCH. I think that is not the language of the amendment.

Mr. NOURSE. Then I certainly wish to amend it in that particular, so as to use the word "require."

Mr. FITCH. On examination, I find that it does require them to do so.

The CHAIRMAN. The original amendment provided for striking out all after the word "purposes," which would of course inhibit the Legislature from doing anything of the kind; and then this proviso which is under consideration proposes to invest the Legislature with the power specified, to issue bonds, or to guarantee bonds, in this particular case.

Mr. FITCH. I understand that to be so. Now, sir, if we place in this section a provision that the revenues derived from the sale of these public lands shall be devoted to the payment of the principal of these bonds, and if we further say that a special tax shall be levied for the purpose of paying the interest, do not we by implication inhibit the Legislature from levying a tax to pay the principal, and say instead that the entire principal shall be paid from the revenues derived from the public lands alone? It can certainly do no harm, if the gentleman believes the Legislature has the power to frame a law for levying a special tax for the payment of the principal of the bonds as well as the interest, to say so in so many words.

I am sorry that the gentleman from Washoe should entertain the erroneous impression that I desired to impugn his motives. At the commencement of this debate, in a speech somewhat loose in its character, I alluded to the effect of this measure upon Washoe County; but he disclaimed the idea of being opposed to the measure on that ground, and I then said, as the Convention will remember, that I was very happy to accept of his disclaimer, and to believe that the gentleman had no desire to serve especially what certainly were the specific interests of his county, by striking out this proviso. And I am happy now to say that I consider the gentleman from Washoe, not only as not lacking in integrity or fair dealing, but as a monument of integrity, of patience, of courtesy, of fair dealing, and of personal beauty. [Laughter.] I have no desire to impute any thing to him which I would not willingly have imputed to myself. But, sir, I do contend that the proposition to make the issuing of bonds in aid of the Pacific Railroad dependent upon the sale of the public lands granted to this State by Congress for internal improvements, is calculated to defeat the very purpose of this provision. I do not say that such is the intention of the gentleman;—on account of his disclaimer, I am of opinion that he did not even think of it; but such is the effect, nevertheless.

You authorize the issuance of these bonds, and at the same time you declare that they shall be paid only by the sale of the public lands granted to this State for purposes of internal improvement, and what will be the result? Why, sir, is there a capitalist in the world who would give fifteen cents on the dollar for three millions of dollars in bonds, with no better basis than the sale of the public lands in Nevada? I do not know what amount of lands could be sold at the present time by the State, but I venture to say that not one million of dollars could be derived from those lands. We have but very few acres of public lands which could now be brought into market, except perhaps out on the deserts, in the vicinity of Fort Churchill, and I do not think that many speculators are going to rush down there to purchase those lands or to pay any considerable sum for them. The fact is, that if we extend this aid at all, in order to make it effective we have got to make provision for its payment in such a manner as to give to the bonds the confidence of capitalists. If we do not do that, our aid will only be a pretense. If you issue your bonds based on the sale of the public lands alone, you may be keeping the promise to the ear, but you are certainly breaking it to the hope. Now, sir, I am in favor of aiding the Pacific Railroad, and I do not now believe—I am happy to say it—that the opponents of this clause are opposed to its being built. I am happy to believe that they very much desire to have it built—provided, always, that somebody else will pay for it. I do not think, at all events, that they would absolutely labor to prevent its coming here, although they have evinced no disposition to aid its coming. With the gentleman from Washoe, (Mr. Sturtevant,) I believe that the finances of this Territory at the present time are in the most deplorable condition. I am almost inclined to quote in regard to them the words attributed to Jefferson Davis by Hosea Biglow:—

"Sathin 's got to be done,
We are clean out of money, and consumost out of land."

[Laughter.] I believe we are in a very bad condition. But I believe the Pacific Railroad would be the salvation of us; that by the construction of that road so as to run one year earlier into this State—and I believe it would be brought here one year earlier by this proviso—it would make a difference of from fifteen to twenty millions of dollars to this community. I think the property which would be created by the construction of that road would amount to so much that the taxes along the line would be sufficient to pay the principal and interest on all the bonds proposed to be issued, within five years. It would take but a moderate amount of increase in our taxable property to do that. I was in favor of supporting the amendment offered by the gentleman from Storey, (Mr. Hovey,) providing that this aid should not be confined to our own Territory, but may be expended in crossing the inaccessible mountains which lie some fifty miles to the west of us; but I became satisfied that the sense of the majority of this Convention was against that proposition, and I therefore suggested to my colleague (Mr. DeLong) to get something pre-

deal before the committee, because I wanted to get to a vote as soon as possible, and dispose of this troublesome question.

Mr. DeLONG. I would like to ask the gentleman one question, and that is, how he would go to work to build a railroad over inaccessible mountains? [Laughter.]

Mr. FITCH. That was a little hyperbole—something that my colleague never indulges in, and therefore knows nothing about. [Laughter.]

Now let there should be any shadow of suspicion lurking in the mind of any gentleman here, or in the lobby, or in the mind of the gentleman from Washoe, that I intended in any way to reflect upon his motives, I wish to repeat that I never designed to impute to him anything but the most exalted patriotism, the most profound morality, and the most perfect fair dealing; and furthermore, I believe him to be the handsomest man in the Convention. [Laughter.]

Mr. NOURSE. I would reciprocate the gentleman's compliments, if I could do so conscientiously. [Merriment.] And now I wish to say this: As this amendment stands at present, it says that the proceeds shall go "towards"—that is the language—"*towards* a sinking fund"; and the power of the Legislature to levy a tax is therefore not limited. The proviso only limits the power to loan or donate the public credit, and not the power to tax. If a State debt exists, the power in the Legislature of the State to levy a tax to pay that debt necessarily exists as a consequence. The gentleman from Storey will not deny that, and therefore I say, as the proviso stands now it fixes no limit, for it expressly says—and that amendment was made at the gentleman's own request—that the money derived from these lands shall go "towards" a sinking fund.

The question was stated on the amendment, and it was again read.

Mr. BANKS. I do not see the use of that word "sum," where it says, "for the extinguishment of the principal *sum* of said bonds."

Mr. HAWLEY. If there is no objection, I will strike out the word "sum."

The question was taken on the amendment as thus modified, and it was agreed to.

The question recurred on the amendment to strike out the proviso altogether, so that the section would read as follows:—

"SEC. 9. The State shall not donate or loan money or credit, subscribe to, or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes."

Mr. NOURSE. I want to say but a very few words as to my reasons for offering this amendment to strike out the proviso. I believe, in the first place, that we need not argue the question as to the necessity to us of the construction of this Pacific Railroad. I believe every man who is not a fool must concede that the railroad is absolutely necessary for the development and continued prosperity of this community, and therefore I will pass that by.

Now, this proviso is, that the State, through its Legislature, may loan three millions of dollars; and there are no restrictions, except that it is to be used exclusively for the building of the railroad. Either we are expected to get that amount of money which we loan, or we are not. Either it is a matter of security, for which we are to give a certain guarantee, that shall be deemed worth something, or it is a mere matter of form. If it is a mere matter of form, it is hardly worth while to put it in our Constitution; if it is a matter of substance—if it is really to allow the Legislature, through the vote of the people, to loan this amount of money—then comes up the question, what are we loaning? or, what are we granting? And I wish to say here, distinctly, that if I believed this loan would advance the building of the Pacific Railroad one year, although there are some objections to it, in this point of view—that the tax is levied on all property equally, while it benefits some property very much, and injures other property very much—yet, nevertheless, I should be disposed, as a mere matter of policy on the part of the State, to at once grant the loan—always provided we were able to grant it, and meet our obligations when they become due. But I would a great deal rather give that money outright than lend it, after all, because then we should have done with the whole thing. I really think it would be a good investment, if it would advance the building of this road as much as one year; and I agree with the gentleman from Storey (Mr. Collins) that the benefit to the State of having the railroad for one year, would amount to a great deal more than the three millions of dollars which it would cost. But it is because I do not believe it will help the railroad a single year, or a single month, or a single day, that I oppose this provision. I think, in the first place, that except so far as the public lands will go—and they will amount to comparatively little—we shall have the whole amount of our loan to pay one of these days. We shall ultimately have to pay both principal and interest—the whole of it. Again, the railroad does not need any aid from us to secure its construction. This enterprise seems to possess already all the elements of wealth; and undoubtedly it will be built, in good time. If we let it alone; and, therefore, I say the issuing of these bonds before the wealth of the State is developed, would be imposing upon the State a very onerous burden. It would be unsafe and unwise to do such a thing in anticipation of a state of things which may hereafter exist, or may not.

Now, I have here some figures giving the amounts of the expenses which have been incurred in maintaining our government, even under the present territorial form. The expenses of the Territory of Nevada for the fourteen months ending December 31st, 1863, amounted to nearly $100,000. Deducting from that the proportion of expenses for two months in 1863, a

hours, as the expenditure for the year 1863, [illegible]; and of that amount, only about $1600 was interest money. In addition to that expenditure, we have now to provide for a large amount of bonds, which did not exist a year and a half ago. We have what we called the Carry bonds, for the penitentiary, amounting to some $60,000, and other bonds for Territorial indebtedness, making, altogether, a total of $[illegible],000 of bonded indebtedness, in addition to the current expenses; and in order to estimate our expenditures for this year, the interest on these bonds will have to be added to the expenditures which I have given for the last year, inasmuch as these bonds did not then exist. One portion of these bonds bear interest at ten per cent. per annum, and another portion at one and one half per cent. per month, making the total interest $35,400 per year. Deducting from that the amount which was paid during the year, or rather, during these fourteen months, and it leaves $34,000 of interest money to be paid this year more than was paid last; and adding that to the $93,000 of current expenses, brings the entire amount of expenditures up to something like $127,000 a year. That is, as a mere Territory, with no heavy expenditures required for judicial officers, or State officers, or anything of that sort, we have an absolute expenditure of $127,000 a year!

Now, sir, I have looked through the Auditor's and Treasurer's reports, and I cannot find that there was any income during that time, except $44,000, and out of that there had to be paid the Federal tax, amounting to $3,113, leaving an income for Territorial purposes of a little less than $38,000. Then I should take out of our expenditures this amount paid over to the Federal Government, and that leaves our total expenses at $121,000, showing for the year, or in that proportion, an income of about $38,000, and against that an expenditure of $121,000. That is the state of our finances at the present time, and certainly nobody complains, I believe, but that our taxes are already heavy enough.

Then when we become a State, with an expensive State government, we shall have to add to that an expenditure of at least double the amount of current expenses. We shall have to reckon our total expenditures at not less than $250,000 or $300,000, and only this small income to offset it. We shall have an annual expenditure of perhaps not less than $[illegible],000 for current expenses, and an income, at least as the case stands now, of only some $[illegible],000. That is certainly a bad enough condition of financial affairs to face.

But I pass that by for the present, and I ask in all candor and seriousness what is the value of the bonds to an amount of three millions of dollars which are going to be issued by a State which has such a show of income and outgo? I repeat the question of the gentleman from Ormsby, (Mr. Johnson), and I want that gentleman (Mr. Hovey) who says he has a thousand of his constituents up in Storey County too poor to pay a poll-tax, and yet who treats this three million loan as a trifle, and this interest of $210,000 a year, as the merest trifle in the world, to show me where the capitalists who are going to buy these bonds are to look for their redemption? I want these gentlemen who despise this contemptible loan so much, to tell me how they can sell bonds, made payable from the proceeds of your public lands? Where are the capitalists who will buy them? Where are you going to find the basis to make the bonds of any worth? I say it seems to me that if you loan the bonds the railroad company will get them, and sell them for what they will bring, and I think twenty-five per cent. would be a very high estimate, so that the whole three millions of bonds would only benefit the railroad to the extent of $750,000. I think that would be a very large and liberal estimate indeed.

Mr. FITCH. Will the gentleman from Washoe allow me to suggest that, as the section has been amended, the bonds are to be issued only for $50,000 for each mile as the road progresses, in this State. And he should take into account the increase in value of the property, as the road progresses.

Mr. NOURSE. I did not understand that that amendment was adopted. I will withdraw all objection if that is the state of things. If the bonds are not to be issued until the railroad crosses the Sierra Nevada Mountains, I will withdraw all objections.

Mr. DELONG. That is the way it stands.

Mr. NOURSE. Very well, then, I withdraw all objection on my part.

Mr. DELONG. And the speech, also?

Mr. NOURSE. Yes, I will take back the speech, also; but let us have the section read, so as to know what we are doing.

The SECRETARY read the section as heretofore amended, as follows:—

SEC. 9. The State shall not donate or loan money or its credit, subscribe to or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes; *provided*, that the State may issue bonds, or secure the payment of the principal or interest, or both principal and interest of bonds, to an amount not exceeding three millions of dollars, at a rate of interest not exceeding seven per cent. per annum, in sums not exceeding fifty thousand dollars per mile for each mile of road actually constructed within the boundaries of the State of Nevada, on such terms as the Legislature may prescribe, to the company which shall first complete a railroad to the State line connecting this State with the navigable waters of California, or with the navigable waters of the Mississippi River, but no law to issue bonds shall be effective unless sanctioned by a vote of the people at a special election to be called for that purpose; *provided, further*, that the sums derived from the proceeds of the sales of the public lands granted to this State for internal improvement purposes, shall be set apart towards a sinking fund for the extinguishment of the principal of said bonds; and *provided, further*, that a special tax shall be levied to secure the payment of the principal and interest of said bonds.

Mr. NOURSE. I suggest one further alteration, out of abundant precaution, and that is,

to say that the bonds shall be issued to the railroad "which shall first have reached the State line," instead of "which shall first complete a railroad to the State line."

Mr. DeLONG. What is the difference?

Mr. NOURSE. Because otherwise the bonds may be granted to some company upon a condition that is to be the one which shall thereafter get there first. I will make it as a motion to amend by substituting those words.

Mr. FITCH. I will second the motion.

Mr. WARWICK. Am I right in understanding that the aid which we are now proposing to give, provided the people so vote, is only to be given to that portion of the road which is to be constructed within the boundaries of our own State?

The CHAIRMAN. That is the language employed, certainly; that is the understanding of the Chair.

Mr. WARWICK. Then I can only say, if that be the case, that, without impugning the motives of any gentleman, I certainly admire the liberality of those members who propose to give just nothing at all to aid this railroad company which is now struggling to reach us on our western borders. It is provided that if that company will construct thirty miles or sixty miles within our borders, then it shall receive this aid, leaving them, sir, to cross those mountain barriers, one of the most tremendous pieces of engineering that has ever yet been undertaken to be surmounted by human genius, without any assistance on our part. It is there that they need the aid, while crossing that mountain barrier, and not within our own State. When this work was first proposed in the national Congress, some of the ablest engineers, men of large experience in that branch of science, stood appalled at the tremendous difficulties and the magnificence of the enterprise, and by many of them the work was pronounced to be utterly impossible. Now we see this railroad company rapidly approaching towards the western boundaries of our State, but the barrier still remains between us, and they now appeal for aid to enable them to overcome it. But gentlemen say: "O, let us hold back! Do not give them any aid, and they will struggle through. Do not give them anything; keep your hands on your pockets, and they will work their way through somehow." And as a warning example, we are referred to the oft-repeated instance of the ruin of Minnesota. In the most ingenuous and honest manner, which is a part of the nature of the gentleman from Minnesota—I beg pardon; from Washoe—he afterwards tells you that though that State had ruined herself by lending aid to railroads, yet that she had never paid a dollar either of interest or principal on her railroad bonds. [Laughter.] Is that the way States are ruined? I do not see exactly where or how, under such circumstances, the ruin is to ensue.

Mr. STURTEVANT. Probably it ruined what character the State had.

Mr. WARWICK. But she had no character to lose. She was like the man who was once asked by another to give his signature to a note of hand, and replied: "O, certainly; you can have my name if it will do you any good; it is of no service to me." It seems, according to the gentleman's account, that when her ruin did ensue, she left those whom she had enveigled into purchasing her bonds to work their way through as best they could, and never paid a dollar on those bonds. Is that what the gentleman proposes here? Does he ask us to leave this enterprise to struggle through, trusting to God Almighty alone, and saying that under no circumstances will we lend it any assistance? We are then to turn our backs upon this enterprise while it is struggling, but after it has got through, and is completed, and sixty miles further built in our own Territory, then we will come forward and give the company fifty thousand dollars a mile at a time when they have no longer any need of our assistance. No, sir; it is not within the borders of this Territory or State that this road needs our aid; but it is in crossing this huge mountain barrier on the west of us. It is there that it needs aid, and every dollar of aid, too, that the State, and the nation, and each county through which this road shall pass, can afford to give it, to enable those who have it in charge to complete this great work.

This is no mere private or individual enterprise. It is a great national work, which is intended to bring to our midst the commerce of the East—to make this the great highway of the nations of the earth. If these gentlemen, with their narrow policy, were legislating only for to-day; if they could not look beyond their own counties, beyond their narrow valleys with mountains and rocky barriers all around, shutting them out from human society beyond, I would not blame them for the course they are pursuing; but, sir, I trust in God that this State has a future,—that we are legislating not for this day or this hour, but that when we shall have passed away, and when our children's children are no more, then this great Pacific Railroad shall continue to stand a monument of human wisdom and of the greatness of the age in which we live. I regard this as the grandest enterprise which has been undertaken in this age. It is one which has commanded the respectful attention of the whole civilized world. To effect similar purposes the energies of great nations have been directed for years. See what efforts have been made to cut a canal across the Isthmus of Darien—a work which presents almost insurmountable obstacles. Now here we have the opportunity, if we will but avail ourselves of it, of making our own land the great highway of the nations. It is for this reason that I am in favor of lending our aid to this work; not as an individual enterprise, for the benefit of a few, but as a great work undertaken by a great people, carried through in a great age, and finished by a great nation.

The gentleman from Washoe has most ingen-

freely warm together a quantity of figures and statistics, and on the top of the pyramid which he has thus reared, he has placed the cost of this enterprise. We have been told that five years ago this Territory was almost a howling wilderness; but five years hence what will it be? Does the gentleman imagine that our mines are all exhausted or depleted; that there is neither silver nor gold left in them? Have not we reason to anticipate that there will be a vast increase in their production?—that the same influences which have built a great city on the side of yonder mountain, and scattered flourishing villages all over the plains around us, will continue to operate? Have not we reason to believe that five years hence our population and our wealth will be doubled? Is the gentleman appalled by the fall in Gould & Curry? Does his mind dwell upon the fluctuations of Savage? Or are his apprehensions aroused by the low prices of hay? I hope we shall not be influenced by such considerations. Unappalled by the present, let us look to the future, and not imagine that we are legislating only for to-day. This sum of three millions of dollars now looming up so hugely before the affrighted imagination of the gentleman from Washoe, before we shall be called upon to pay it may seem to be but as a drop in the wide ocean. I hope that before another year shall have passed away our population will have been doubled, and I think we have every reason to expect that it will be. The new discoveries which have been made in our midst are such as to justify ten times our present amount of population. I think we need not shrink in the least from authorizing this loan of three millions, and I think the justice and liberality of this Convention will so determine this question. Let us, at least, allow the Legislature to act hereafter in such a manner as the then existing circumstances of the State shall warrant. I hope we shall not hamper and hem in this appropriation in such a way as to render it utterly worthless to the enterprise which we seek to aid.

Mr. FITCH. I start, Mr. Chairman, with the proposition that in giving aid to the Pacific Railroad, it is best that it should be given liberally and effectively. I am disposed to give to the managers of that enterprise all the aid possible, and also to allow them to expend that aid either in California or in this State, as they deem best. But the more I think of it—the more facts I hunt up in relation to it—the firmer becomes my conviction that the proposition as amended by my colleague, (Mr DeLong,) which is the form in which the proviso is now before the Committee—is the one which should prevail. Now, it is true that we should extend aid to the Pacific Railroad. I have always been in favor of that. And I believe, also, that we should give it as much aid as possible, or, at all events, as much as we can afford. But I was disposed, nevertheless, to accept of this amendment; and I am surprised that the gentleman from Lander (Mr. Warwick) should make any opposition to it, or should favor the idea of our giving money to this enterprise without restricting its use, or specifying, in some manner, where it is to be used.

Now, sir, I have in my hand a summary of "An Act to aid in the construction of the Pacific Railroad," which was passed at the session of the California Legislature, of which both the gentleman from Lander and myself had the honor to be members. And here I will ask, if the construction of this road is to prove, as it will prove, to be an immense benefit to the people of Nevada, what benefit will it prove to be to the people of California? If it will enhance the wealth of Virginia City, and Carson, and the various other cities and towns of Nevada, what will it do for San Francisco, and Sacramento? If it will do so much for the State of Nevada, what will it not do for the State of California? We shall be, for many years hereafter, as we have been heretofore, to some extent, dependent upon California; and the wealth which we produce will, a large proportion of it, at least, be poured into the lap of California, by means of this railroad; so that the railroad will be nearly as great, if not a greater benefit to her, than to ourselves. Now, in consideration of this promised benefit, what has the State of California done for the Pacific Railroad? Why, sir, this act provides that whenever the Central Pacific Railroad Company shall have completed not less than twenty consecutive miles, for the conveyance and transportation of passengers and freights, the road to be supplied with culverts and all other appurtenances of a first class railroad—when all this is done and completed, and the twenty miles of railroad ready to go into operation—then the State of California will give $10,000 a mile. It provides that in the construction of this railroad from the city of Sacramento to the State line dividing California from Nevada, when the railroad shall be completed from the city of Sacramento, through a distance of not less than one hundred miles, then the company shall have this $10,000 per mile, which is just one million of dollars altogether, and this for all that California portion of the road—the difficult portion which the railroad is now struggling to pass. Now, what does the State of Nevada propose to do? Why, our Constitutional Convention proposes here to adopt a provision authorizing our first, or any subsequent Legislature, to give $50,000 per mile for railroads to be built within our own boundaries; which is just five times the amount that California gives.

It may, very probably, be urged that California could not do more, because her Constitution prohibited her doing more. Well, sir; amendments have recently been adopted to the Constitution of that State, and it would have been very easy for them, if they had chosen to do it, to place such an amendment in their organic law as to enable them to give three, five, or ten millions in aid of this enterprise; and

where we can afford to give three millions. California can certainly afford to give ten. Now, sir, I believe that not only for the sake of our own interests, but also for the sake of manifesting that liberality to which the gentleman from Lander (Mr. Warwick) appeals, we really ought to extend our aid to this struggling road which is trying so hard to get over the mountains to us. But we must bear in mind that this road is already bountifully aided. It has already $10,000 dollars per mile from the State of California, and $48,000 dollars per mile from the General Government, (and I believe that has since been doubled, making it now $96,000), and it is also liberally aided from Nevada County, Placer County, and San Francisco. It certainly has an abundance of aid already, and while I admit that we ought to aid this railroad, so far as it is in our power to do so, yet, I say we should be just before we are generous—just to our constituents before we are generous to California, the people of which State will be as greatly benefited by the road as we can be. I find that the logical deductions from my own premises are bringing me to conclusions which I would not have accepted one week ago; and I tell you that in giving three millions of dollars to any road, we are acting very generously. It is true that we should be just to ourselves at the same time, but we should be more so by prescribing that the aid we give shall be expended within our own limits. If there is a community on the face of God's earth to which this railroad will be a benefit—if there is a community that will grow rich by it—that community is San Francisco. It will bring her up to a position like that of Tyre and Sidon, and her merchant princes will become the honored of the earth. She will be next only to New York in mercantile wealth and grandeur. And yet San Francisco is quibbling, and fighting, and getting out injunctions over the miserable few thousands of dollars voted by her people as her appropriation in aid of this road. I think the people of Nevada will be generous and liberal if they give $50,000 per mile, when California only gives $10,000. I am in favor of this railroad, and I believe that the people of Nevada will be able to give this aid; but I want it provided that the entire amount of it shall be expended in our own limits.

Mr. BANKS. The gentleman is mistaken as to the amount given by the State of California. He refers to the law of 1863; but another law was passed last winter, giving the road a very large sum. The gentleman was a member of the California Legislature in 1863, but since that time another session has been held, at which a very large appropriation was made in aid of this enterprise. I forget the amount, but I think it was two millions of dollars.

Mr. FITCH. Then have not they had enough money given them?

Mr. BANKS. The gentleman is also in error in regard to the increase of the amount granted by Congress. I have just received a positive statement on that subject, to the effect that they did not get any increase of the amount of the Federal aid.

Mr. HAWLEY. The latest dispatches state that Congress gives double the amount of land, but no more in bonds.

Mr. FITCH. But the first mortgage may be made by the Railroad Company, taking precedence of the Government mortgage.

Mr. DELONG. As one of those amendments which the gentleman from Lander (Mr. Warwick) denounces is mine, I suppose I am called upon to justify myself against the charge of meanness in regard to the Pacific Railroad. Now, it strikes me that it is not mean to give $50,000 to the mile, when that amount will build every mile of the railroad to be built in the State—when we offer to father the whole cost—free, gratis, of building this railroad for the distance of sixty miles, as soon as it shall have reached us. It seems to me that, for a little four-year-old people, with no resources to depend upon, such a donation is a long ways from meanness. And when we take the whole of our revenues to be derived from the public lands, as we do by the amendment of the gentleman from Washoe, (Mr. Sturtevant,) and devote them to this object, we give the railroad company a double guarantee that the bonds shall be paid. In other words, we give the whole of the land; and not content with that, we tax the people for the residue. I know the gentleman does not use the language in a offensive sense; I know that he does not intend to charge the people of Nevada with meanness; but still, that is the effect of the language of the gentleman—that it is mean narrow-mindedness, which underlies a provision of this kind. I say it is far from that, when I am willing to mortgage myself, and the constituents I represent, to pay the whole cost of the railroad for sixty miles, whenever it shall come within our limits; a railroad, too, that promises to pay its projectors, whenever they do get it to our borders, more munificently than any other similar enterprise in the world—and they know it. It is a company aided and encouraged by the Federal Government, and by the people of the whole nation; aided and assisted by the State of California, by various counties in that State, and by the voices, the hopes, and the warmest wishes of the people of the entire Pacific coast. Such a company will not think us mean, when they hear that we give them $50,000 per mile for every mile they build in our borders to the extent of sixty miles. I am willing to leave that matter to the good sense of the proprietors, or rather, the projectors of that road, and let them say whether or not this donation—with all the security which we give for its payment—is a liberal one; and I feel well assured that we will not be charged by them with meanness.

It is strange to me that gentlemen will insist upon it that we are hostile to this enterprise. I have said, and I repeat it, and my assertion stands as good as any other member's, that

there is not a man within the hearing of my voice, nor in the wide world, who is more anxious for the completion of that road than I am, or who foresees grander or more magnificent results naturally to flow from it, when it shall be completed. It will bind us together, indissolubly, as a nation. It will be of incalculable advantage to us in case of a foreign war. If a hostile nation should seek our coast, it would bring us millions of freemen from the eastern States, coming to our defence with bayonets glistening, over the mountain crests. They might be shoulder to shoulder with us almost upon a day's notice. I see the importance of all this; but I do not believe in giving away money which our people have so hardly earned—money raised by over-taxing our people—to be applied towards building a railroad outside of the limits of our State. I believe that would be unwise, and I believe, further, that it would plunge us into a debt of three millions of dollars, in return for which, we should receive no considerable benefit. It would not help the road to an amount exceeding $750,000, which would be, comparatively, but a mere trifle; while, if we grant our aid after the road reaches our borders at the rate of $50,000 per mile, our bonds will be worth then almost dollar for dollar, and the road would receive the full benefit.

Mr. WARWICK. I believe it was the gentleman from Storey who proposed what seems to me to be the death-blow of this railroad clause, that is, that the rate of interest shall not exceed seven per cent. per annum.

Mr. DuLONG. The gentleman is the most mistaken man in the world, for I voted against it.

Mr. WARWICK. Was it adopted?

Mr. DuLONG. It was, and so stands now.

Mr. WARWICK. Then, with the leave of the gentleman, I would say, that our Territorial bonds heretofore issued are drawing not less than ten per cent. interest, and the Ormsby County bonds fifteen per cent. or thereabouts, if I am not mistaken—twelve per cent. at least—and yet it is almost impossible to raise money on those bonds, even at such rates. I therefore look upon this provision as entirely worthless, although I do not undertake to impugn gentlemen's motives at all.

Mr. DuLONG. I will only say that the rate of interest seems to me very fair, as the time is far off, perhaps, when the bonds will be issued, and inasmuch as the Legislature is to issue only $50,000 at a time. It strikes me that when we have a railroad building across our State, and we appropriate $50,000 at a time in aid of it, our financial condition at that time will be such, or at least promises to be such, that those bonds may be fairly negotiated, as fast as they are issued, even bearing interest at the rate of only seven per cent. per annum. If, on the other hand, they are issued now, when we have no railroad and no resources to rely upon, I admit that the rate of interest would have to be greatly increased in order to command any price in the market, and seven per cent. would, in such a case, be but a niggardly rate of interest. I am willing to vote for the proviso as it now stands, including the rate of interest at seven per cent., because I believe that by the time the railroad is built, by means of the sales of the public lands, and a comparatively light tax in addition, perhaps, we can raise the amount without difficulty, and our bonds will be worth dollar for dollar in the market. I hope so at least, although I may be over sanguine.

Mr. WARWICK. I move to amend the proviso as it now stands, by striking out the word "seven," where it precedes the words "per cent.," and inserting in lieu thereof the word "ten."

[Mr. FRETZ in the Chair.]

Mr. JOHNSON. Now, sir, I hope this amendment will not be adopted. While the difference between seven per cent. and ten per cent. could be of compartively little value to those who received the bonds, yet when the aggregate amount of such bonds shall have been issued, it will so much more increase the burden upon the people of the State. It will require an additional tax upon the people in each and every year of $90,000. Those who are familiar with the financial condition and financial history of California, are tolerably well advised of the fact that in the early period of that State, bonds were issued, bearing interest at the rate of three per cent. a month: there was a time when those bonds could not be sold for more than fifty cents on the dollar; and sir, at a later period, but before the State had become assured in her financial policy the interest on the public debt had become an enormous burden. The bonds of the State were then issued to the amount of $3,900,000, covering its outstanding indebtedness, and bearing a rate of interest of seven per cent., and within eighteen months from the time they were issued, they were worth in the money markets of the United States, and were selling in the city of New York, for ninety-five cents on the dollar; and sometime afterwards, about the commencement of the war three years ago, before the financial reverses and the changes in the currency at the East, the bonds of California commanded a premium in the city of New York, although they bore interest only at seven per cent.

Now, if we were to proceed solely upon the basis of the taxable property which we have to-day, and upon our resources or probable revenues, then I am free to admit that ten, or even twenty per cent. would not secure the sale of these bonds for their face value; but we do not act upon that basis, nor anticipate any such result. At the time when it will be incumbent on the people, through their Legislature, to lend aid to this great and important work, I feel confident that we shall have such an amount of taxable property, and other resources, of a character to insure the prompt payment of those bonds, as they shall mature,

and payment of the interest on them from year to year as it falls due, so as to make them equal in the market, or nearly so, to their face value. Therefore, as the proposed increased rate of interest can be of no substantial benefit to any one, except those into whose hands the bonds ultimately fall, I hope that no such increase will be made. It would be giving an additional argument to the opponents of a State Government, which we can now deprive them of, and at the same time we shall be saving to our people the burden of $90,000 a year of interest, which otherwise they will have to bear when the bonds shall be issued. It would be of no benefit, no possible advantage to this roadroad enterprise, and at the same time it would be an unnecessary hardship on the tax-payers of the State. I hope the rate of interest will be permitted to remain at seven per cent. as in the original proposition.

The question was taken on the amendment offered by Mr. Warwick, and it was not agreed to.

The question was taken on the motion of Mr. Nourse, to strike out all after the words "educational or charitable purposes," (being the entire proviso relative to the railroad), and it was not agreed to.

No further amendment being offered, the section, as amended, was adopted.

MUNICIPAL LOANS.

Section 10 was read, as follows:—

SEC. 10. No county, city, town, or other municipal corporation, shall become a stockholder in any joint-stock company, corporation or association whatever, or loan its credit in aid of such company, corporation, or association.

Mr. BANKS. I move to amend the section by adding the following words—"except railroad corporations." It may be well enough to make some restrictions upon the power of counties, cities, and towns, in the way of their lending their credit, though I very much doubt the policy, and more especially do I doubt it in these matters, so far as railroads are concerned. For instance, on the other side of the mountains we have the case of the railroad from San Francisco to San Jose, which I think would not have been built up to this time, and probably not for many years to come, without the aid of the counties through which it passes. It is a work of very great importance to those counties, and that is one case among many which might be mentioned where aid of this kind should be permitted to be rendered. There was very strenuous opposition to the passage of the Acts of the Legislature by which that aid was secured; but now, after a very fair and thorough experience in that particular, I think it would be difficult to find a man in those counties which aided the railroad, who would seriously question the propriety of giving that aid. I refer to this case only because it happens to be a matter within my own knowledge and experience. I believe it would be bad policy in our State to place any restrictions upon towns or counties in that particular. It often happens that a town or county is deeply interested in some railroad within its borders, and it is not unfrequently the case that an enterprise of this magnitude cannot be carried upon with success by individuals, because it may be impossible to get capitalists to aid it in the way of private investments. It may be an undertaking in which everybody feels a deep interest, and in which everybody would be willing to invest, provided everybody else would come to its aid in proportion to their means; but still, upon the principle that what is everybody's business is nobody's business, men do not come forward to subscribe, and so the enterprise languishes. I think, in such a case, the people should have the privilege of deciding, as they have done very properly and successfully in the State of California, in many instances, whether they will generally and unitedly go into it, and by a system of taxation, imposing the burden equally upon all, secure the construction of a work which is going to benefit every person in the community.

In connection with one of those railroad enterprises in California which have been carried through successfully, I remember a circumstance, which I will mention as an illustration of this truth. I was one of those who very earnestly supported the issuing of the bonds of San Francisco in aid of that road. It so happened that many of my friends began to cherish feelings of hostility towards me, on that account. They wrote me letters, they telegraphed to me, and they did all they could to induce me to change my course. However, I voted and labored for the measure, and when I went home, some of those friends would scarcely speak to me. They thought I had done a monstrous act, and would scarcely exchange a word with me when we met in the street. But, as luck would have it, they all owned more or less of property along the line of that road, and in less than six months time, they were benefited by the increase in the value of that property to the extent of nearly one-fourth of the entire amount of the bonds issued by the county. Now, I do not know that many instances of that kind would be likely to occur here, but I do know that no work of that kind can be constructed in a county without benefiting some of the citizens of that county to a very great extent, and all, to a greater or less degree. All I ask is, that the people, in such cases, shall have the right of deciding the question for themselves, and I hope the amendment will be adopted.

Mr. JOHNSON. I suggest that the gentleman modify his amendment so as to read, "except railroad corporations, companies, or associations."

Mr. BANKS. I accept the amendment.

The question was taken on the adoption of the amendment as modified, and it was adopted.

No further amendment being offered, the section, as amended, was adopted.

FINANCE AND STATE DEBT.

The Committee of the Whole next proceeded to the consideration of Article IX, entitled Finance and State Debt.

THE FISCAL YEAR.

Section 1 was read, as follows:—

Section 1. The fiscal year shall commence January 1st.

No amendment being offered the section was adopted.

Section 2 was read.

Mr. DeLONG. I move to amend Section 1, by striking out "January," and inserting "May."

The CHAIRMAN. That section having been adopted, it will be necessary to reconsider the vote.

Mr. DeLONG. I will make that motion, then. I think May 1st is the best time to commence the fiscal year. January 1st is about the most impracticable time in the year.

Mr. HOVEY. This fixes the fiscal year for the revenue department, and it may, perhaps, be deemed desirable by the Legislature to change the time hereafter, as it has been changed within the last year from March to May. That change was made by the last Legislature.

Mr. JOHNSON. I will second the amendment merely that we may hear the reasons given why the time should be changed from the first of January. I suppose there must be some reason for it. The Legislature has changed the time from March to May; but now I understand it is suggested by the gentleman from Dakota (Mr. DeLong) that January is an inconvenient period to reach the State Capital.

Mr. HOVEY. There are other reasons, and I think that our Treasurer would be able to give them more fully, perhaps, than I could. Certainly, in the collection of our revenues it might make a great difference, because there are certain seasons of the year when we have twice as much personal property in our Territory as we have at other seasons. I would like to hear from the gentleman from Ormsby, (Mr. Kinkead,) who has paid attention to this question, and should be inclined to defer to his judgment upon it. If we leave it to the Legislature, they can make the change, if necessary, but as the section now stands, we fix the time irrevocably.

Mr. KINKEAD. Under the existing revenue laws, I think it would be better to have the fiscal year commence at a later period in the year—say the first of May, or even July. The great bulk of the revenue is now collected during January and February, and it would be satisfactory to the Legislature, perhaps, to have the fiscal year commence later in the season, though I do not know as it is really a matter of very great importance at what particular time the fiscal year does commence.

Mr. FRIZELL. Probably it would be difficult for any person who has not been connected in some manner with the collection of the revenue, or with the operation of the revenue laws, to say why the first day of any one month in the year should not be as good as any other for the beginning of the fiscal year; nevertheless, the remarks made by my colleague, (Mr. Hovey,) that there is a vast difference in different seasons of the year, in the amount of property to be assessed in the several counties, is undoubtedly correct. For instance, if the fiscal year commences on the first day of January, it will be obligatory to commence assessing during January, and the law will give the assessors only eight months to complete the work, and deliver over the assessment-rolls to the County Auditors. Then if the assessment is made during the winter months, gentlemen are probably aware that the amount of property to be assessed would not amount to nearly as much as it would during other months in the year. Another thing; if we commence assessing in the month of January, and deliver the assessment-rolls the first day of September, taxes will become due under the revenue law, about the first of October, and consequently will require to be paid, under the law, in October and November. Taking into consideration the time when the taxes must be collected, under the law, my private opinion is—and I am pretty positive on that point, from having been connected with the revenue department for the last three years—that this question had better be left to the Legislature altogether.

Mr. JOHNSON. I confess that I have some diffidence about speaking on this subject, of which, apparently, others must have more knowledge than I possess. Each of the gentlemen who have addressed the Committee have occupied, and do now occupy, such positions, that it seems as if they must understand the matter thoroughly. But I take as my text, if you choose to so consider it, the suggestion of my colleague, the Territorial Treasurer, (Mr. Kinkead,) that is to say, that the laws can readily be so changed as to assimilate with the fiscal year as established in the Constitution. That being conceded, unless there be some good reason for a change, I hope none will be made. The revenue laws of the Territory should, and undoubtedly will, under this Constitution be continued, until they are changed or modified by the State Legislature, and I do not now see any reason why we cannot as well fix the fiscal year here, as to leave it to the Legislature. I believe it is usual to fix the beginning of the fiscal year on the first day of the year, and I do not now remember any exception to the rule that the beginning of the fiscal year is fixed in the Constitution. In the State of California the fiscal year is prescribed as commencing on the first day of July, and I can speak with some degree of personal knowledge of the difficulties which we have had to encounter in that State, on account of that provision. I refer to the assembling of the Legislature, and to the out-going and in-coming of

the officers of the State Government, which takes place about the first of January. Now, what is the effect of a provision like this? Frequently the Executives of that State have been under the necessity of anticipating the time when the County Treasurers are required by law to make their settlements, and to require them to make them two or three months in advance, in order that members of the Legislature might be able to receive their mileage, otherwise they would have been without a dollar with which to pay their board bills.

Mr. DeLONG. They were often without a dollar, as it was.

Mr. JOHNSON. Well, doubtless, that was so, but that was probably the fault of the legislators themselves, rather than of the fiscal year. Now, these revenue laws can be made to assimilate to the fiscal year's commencing on the first of January, as well as if it began on the first of July, and, I think, even better. It occurs to me that there is ample time and opportunity to arrange that matter. Then it may be provided that the taxes shall be assessed during that period of the year when, ordinarily, the greatest amount of taxable property is to be found—that is to say, the autumn months—and so the assessors would be enabled to secure the taxes upon that kind of property, to wit, personal property. There would still be ample time to have the assessment-rolls examined and corrected, and placed in the hands of the collectors, so that the great mass of the taxes would be collected before the first day of January. I think my colleague (Mr. Kinkead) will agree with me in that respect. Another argument which I think deserves some consideration is, that it would rather facilitate the collection of the taxes. I can see many good reasons why the section should not be changed, but should rather be left as it is now, commencing the fiscal year on the first day of January. Then when we come to adjust the accounts at the out-going of one administration, and the in-coming of another, we can see how those accounts stand. When the fiscal year is coeval with the life of the administration—with its tenure of office—we can more easily approximate to the receipts and expenditures of each administration; while, if you carry the fiscal year along from one administration two or three months into the next, you necessarily get the accounts of their respective receipts and expenditures somewhat confused and mixed, so that the people cannot determine as to the state of the accounts and the relative economy exhibited by the respective administrations. The accounts become so confused that it is impossible for one of ordinary experience to comprehend and illustrate the various inquiries which may be propounded in that connection.

The CHAIRMAN stated that the question was upon the motion to reconsider the vote by which Section 1 was adopted.

Mr. FRIZELL. I hope the vote will be reconsidered, for the reason that if the fiscal year commences on the first day of January, gentlemen will see that the collection of taxes will necessarily fall within the months of October and November. Now we have all lived in California as well as in this Territory, some a greater and some a less amount of time—I have for the last twelve years—and we know that that is a time of the year when we are called upon for money more than any other. We are then laying in our winter supplies, either as individuals or as merchants, traders, or miners. Therefore, if the section is reconsidered, I hope it may be amended by inserting the word May, instead of January. Then the collections will come in January and February, and we shall have time enough to recuperate after our necessary expenses in the fall. We shall be enabled to get together money enough to pay our taxes.

The question was taken upon the motion to reconsider, and upon a division, it was not agreed to—ayes, 9; noes, 11.

Section 2 was again read, as follows:—

SEC. 2. The Legislature shall provide for an annual tax sufficient to defray the estimated expenses of the State for each fiscal year; and whenever the expenses of any year shall exceed the income, the Legislature shall provide for levying a tax sufficient with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

No amendment being offered, the section was adopted.

LIMITATION OF INDEBTEDNESS.

Section three was read as follows:—

SEC. 3. For the purpose of enabling the State to transact its business upon a cash basis, from its organization, or for the purpose of defraying extraordinary expenses, the State may contract public debts; but such debts shall never in the aggregate, exclusive of interest, exceed the sum of three hundred thousand dollars; *provided*, that the further amount of indebtedness authorized by Article VIII, of this Constitution, shall be deemed legal and valid whenever said debt shall be incurred in accordance with the provisions therein expressed; and said debts shall be separate and independent of the State debt herein provided for. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein, and every such law shall provide for levying an annual tax sufficient to pay the interest semi-annually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or intercepted, until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the State, when all its debts and liabilities amount to said sum before-mentioned, shall be void and of no effect, except in cases of money borrowed to repel invasion, suppress insurrection, defend the State in time of war, or if hostilities be threatened, provide for the public defense.

Mr. DeLONG. I would like to ask what would be the consequence if the State debt amounted to three hundred thousand dollars at the time of an invasion or insurrection? Could the State then raise money in order to repel such invasion, or put down such insurrection, notwithstanding this section?

Mr. COLLINS. I think so.

Mr. DeLONG. Let us look at it and see what must be the construction. It says: "but such debts shall never in the aggregate, exclusive of interest, exceed the sum of three hundred thousand dollars; *provided*"—and here follows the railroad arrangement, which says that that three millions loan may be made, and that it shall not be considered a part of this aggregate indebtedness of the State. I think we shall have to amend this first part of the section by incorporating the words, "except for public defense;" or we may say, "except as hereinafter provided." That would remove any doubt of the legality of a loan negotiated by the State in a case of invasion or insurrection, though its debt might have already reached the limit of three hundred thousand dollars.

Mr. JOHNSON. I suggest whether the transposition of some of the language preceding the proviso would not reach the difficulty, better than to insert the words the gentleman suggests after the words, "three hundred thousand dollars."

Mr. DeLONG. No, sir; I think it would read better as I have proposed it, at the end, after "three hundred thousand dollars."

Mr. JOHNSON. Then you want to strike out the words, "or for the purpose of defraying extraordinary expenses," and let the words "except for the purpose of defraying extraordinary expenses, as hereinafter mentioned," follow the words, "three hundred thousand dollars."

Mr. DeLONG. I think we had better include the next section, and let it read, "except for the purpose of defraying extraordinary expenses, as mentioned in this and the following section."

Mr. JOHNSON. The word "hereinafter" will include that.

Mr. DeLONG. Very well; that will do. My idea is, that capitalists are very careful when they are loaning their money, and when you put into your Constitution a provision affecting the legality of such a loan, they will scrutinize it very closely before they will make any loan. Let us hear the section read as it will stand with the amendment.

The Secretary read the section as proposed to be amended, as follows:—

SEC. 3. For the purpose of enabling the State to transact its business upon a cash basis from its organization, the State may contract public debts; but such debts shall never in the aggregate, exclusive of interest, exceed the sum of three hundred thousand dollars, except for the purpose of defraying extraordinary expenses as hereinafter mentioned; *provided*, that the further amount of indebtedness authorized by Article VIII, of this Constitution, shall be deemed legal and valid whenever said debt shall be incurred in accordance with the provisions therein expressed; and said debts shall be separate and independent of the State and herein provided for. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein, and every such law shall provide for laying an annual tax sufficient to pay the interest semi-annually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished, until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into, or assumed by or on behalf of the State, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect, except in cases of money borrowed to repel invasion, suppress insurrection, defend the State in time of war, or if hostilities be threatened, provide for the public defense.

The question was taken, and the amendment was agreed to.

No further amendments being offered, the section, as amended, was adopted.

ASSUMPTION OF MUNICIPAL DEBTS.

Section 4 was read, as follows:—

SEC. 4. The State shall never assume the debts of any county, town, city, or other corporation whatever, unless such debts have been created to repel invasion, suppress insurrection, or defend the State in time of war.

Mr. JOHNSON. I think an additional amendment is necessary here. I will therefore move to amend by striking out the words, "defend the State in time of war," and inserting in lieu of them, the words, "or provide for the public defense."

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

STATE SCRIP.

Section 5 was read, as follows:—

SEC. 5. No scrip, certificate, or other evidence of State debt whatsoever, shall be issued, for the payment of which there are no funds in the treasury, except for such debts as are authorized by the third section of this article.

Mr. WARWICK. I will move to amend, by striking that section out entirely. I will give my reasons for it. There was a provision similar to this among the laws of the State of California, but it was found to work a very great hardship. When there was no money in the treasury it was impossible, under this provision, to issue any certificate or acknowledgment of the indebtedness of the State, and the consequence was, in the case of members of the Legislature who came to the State Capital to serve the people, that although the indebtedness was incurred by the State, yet not being able to receive any acknowledgment of that indebtedness, they were unable to negotiate it. Although the debt was valid, yet having no certificate or other evidence of indebtedness, the individual members were unable to raise anything upon it, and it was therefore found necessary, at the last session of the California Legislature, in which I had the honor to serve, to abrogate that provision. There is no good reason why, if the State incurs indebtedness, it should not issue the acknowlment to the creditor, whether the money to pay it be in the treasury or not. The creditor should at least have some acknowledgment of

the indebtedness of the State in his hands or in his pocket. If, in the case of a private individual, an indebtedness has accrued, he has no hesitation in giving to his creditor an acknowledgment, so that it shall stand against him and be negotiable in the market. For that reason it was deemed necessary and expedient, by the assembled wisdom of California, to abrogate that provision of law. I know, if I may refer to my own experience in this connection, that that action of the Legislature had a very healthy effect, because when we had no warrants for our pay we could not negotiate at all, but with the warrants in our hands, we could go into the exchange and negotiate readily.

Mr. HAWLEY. I think the gentleman misunderstands the provision. As I understand it, it only provides that a claim which is not authorized by the third section of this article, or elsewhere in the Constitution, shall not be allowed, or scrip shall not be issued for it. If the State incurs indebtedness authorized by this third section, the gentleman cannot suppose that the proper authorities will hesitate for a moment to issue the scrip or certificate of actual indebtedness. But, on the other hand, if any indebtedness is contracted by the State or its agents, outside of that which is authorized to be contracted by Section 3, or elsewhere in the Constitution, even if the scrip were issued it could not be paid. I was about to say that it would seem to be hardly worth while to make this provision at all, as it is merely a matter of extra precaution. I will merely say, however, that it would be useless to issue any evidence of such indebtedness, for it would have no force or effect, as it could not legally be collected in any manner. And furthermore, if such a case should ever arise, it is entirely probable that the only means of obtaining payment, would be by special legislative action, or some similar course. I think the gentleman from Lander labors under a misapprehension as to the effect of the section. I hope his amendment will not prevail.

Mr. WARWICK. I will endeavor to explain my view of the matter. When the aggregate indebtedness of the State reaches three hundred thousand dollars, then, upon the convening of the Legislature, (to make a practical illustration), the Controller would be bound by this provision not to issue any evidence of indebtedness to the members of the Legislature. I am only guided in this matter by the light of experience—I believe, in fact, that the gentleman now occupying the Chair (Mr. Fitch) has had similar experience as a member of the Legislature of California.

The CHAIRMAN. The present occupant of the Chair, being a capitalist, never had any occasion to negotiate. [Laughter.]

Mr. WARWICK. I stand corrected.

Mr. DELONG [in his seat.] And awfully astonished! [Laughter.]

Mr. WARWICK. The Chairman's present statement does not tally exactly with something he once told me in that connection, which, however, I will not repeat here. I say that under this provision the Controller is not authorized to issue his warrant for the indebtedness; so the consequence is, that every member of the Legislature, especially those coming from a distant part of the State, finds himself, as our chairman said on a former occasion, in a state of impecuniosity.

Mr. DELONG. O, they can get the Sergeant-at-Arms' scrip.

Mr. WARWICK. But that is not like the Controller's warrants. I think I am not mistaken about this matter, and I think my other able associate in the California Legislature, the other gentleman from Storey County, (Mr. DeLong,) will bear witness that in more than one instance he has been compelled to negotiate.

The question was taken upon the amendment offered by Mr. Warwick, to strike out the whole section, and upon a division it was agreed to—ayes, 16; noes, 6.

TAXATION.

The Committee of the Whole next proceeded to the consideration of Article VII, entitled Taxation.

Section 1 was read, as follows:—

SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, including mines and mining property, excepting such property only as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes.

Mr. TOZER. I move to amend the section, by striking out all after the words, "both real and personal."

Mr. DELONG. I move to amend, by striking out only the words "including mines and mining property."

Mr. TOZER. I accept that amendment.

Mr. BANKS. I propose, as an amendment to the section, to insert, instead of the words proposed to be stricken out by the gentleman from Storey, the words, "provided, that in the taxation of mines, the proceeds only shall be taxed." Let those words be inserted at the end, so that the section will read thus:—

SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such property only as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes; provided, that in the taxation of mines, the proceeds only shall be taxed.

Mr. DELONG. O, strike it out altogether, and put the mines on a footing with other property: that is the best way.

Mr. HAWLEY. I wish to ask, for information, whether the amendment offered by the gentleman from Humboldt (Mr. Banks) is a substitute for the amendment offered by the gentleman from Storey, (Mr. Tozer,) as modified by the other gentleman from Storey, (Mr. DeLong.)

Mr. JOHNSON. It is an amendment which proposes to add to the section, and consequently it takes precedence of a motion to strike out, although it is to be regarded as an amendment.

Mr. HAWLEY. Does the Chair understand that that amendment is properly before the Convention?

The CHAIRMAN. The Chair understands that the amendment of the gentleman from Humboldt (Mr. Banks) is under consideration.

Mr. HAWLEY. I wish to ask a question of the gentleman from Humboldt, as to his object in offering his amendment. I wish to ask him whether, under the language of the section providing for the taxation of all real and personal property, he thinks the actual value of the improvements of mines are to be considered as legitimate subjects of taxation? For instance, what I mean by the actual value of the improvements is the amount which has been expended in the operations connected with the opening and the arrangement of mines, like the Gould & Curry, for example, and other mines, to such an extent that they can be worked. Is that expenditure to be reckoned as a part of the improvements? In other words, is the expense for tunneling, timbering, chambering, and all the other works of a first-class mine, to be reckoned as a portion of the value of the improvements? I wish to know if that is the view which the gentleman from Humboldt entertains, and if I am satisfied of that—if the amendment covers that ground—I will not occupy the time of the Convention with any argument in favor of it.

Mr. BANKS. I suppose that under this amendment the mines will occupy about the same position here that they do in California, and the improvements thereon will be taxed as other property. My further answer to the gentleman's inquiry is contained in the language of the amendment, that "the proceeds only shall be taxed."

Mr. COLLINS. Gross, or net?

Mr. BANKS. That question of gross and net I propose to leave to the Legislature, and for the reason that gross proceeds do not continue for any considerable length of time after it is found that net proceeds do not exist.

Mr. COLLINS. How are you going to get at the gross proceeds, when the Gould & Curry declares over two hundred and fifty thousand dollars in dividends, and returns its gross proceeds at only seven hundred and fifty thousand dollars? How is that to be determined?

Mr. HOVEY. I think the gentleman is mistaken. I think it has been a little over four millions for the last year.

Mr. DeLONG. I suggest to the gentleman from Humboldt to incorporate the word "net" in his amendment.

Mr. BANKS. I prefer not to incorporate that word, if it can be avoided, for the reason that I wish to leave the question, which is a difficult one, to the Legislature.

Mr. DeLONG. It will be an unending source of wrangling. If this amendment is adopted in that form, each succeeding Legislature that meets will be divided in opinion on this subject. Every miner in the Legislature will insist that the Constitution intended "net proceeds," and every "cow-county" representative will contend that the Constitution meant "gross proceeds," and the question never can be satisfactorily settled. I think we ought not to shrink from our responsibilities, and leave them for others to assume, who must of necessity be powerless to settle such questions definitely. If this matter is carried into the Legislature, the discussion will be continued from year to year, and no good can grow out of it. Now let us come squarely up to our work. If we want to tax gross proceeds, let us say "gross proceeds," and if we want to tax net proceeds, let us say "net proceeds." If gross proceeds win, let gross proceeds have it; if net proceeds win, let net proceeds have it. There are hundreds of mines, the gross proceeds of which do not pay the expense of working the mines. That is the experience of any man here who has had any experience in the mines, and if you tax the gross proceeds of those mines, or even leave it a question of doubt whether or not they are to be taxed, so that their owners will fear that result, the people will bury your Constitution out of sight. You may as well tear this instrument up and go home, as to dodge this question, and submit the Constitution to the people in that shape. Now, I represent a mining constituency, and others here represent agricultural constituencies. I say, let us fight this thing out fairly; and if we do not succeed in fighting it out here, then let us go home and fight it out there. I move to amend by inserting the word "net" before the word "proceeds," in the amendment of the gentleman from Humboldt.

Mr. BANKS. I would prefer very much indeed to have that question left to the decision of the Legislature.

The CHAIRMAN. The Chair will be compelled to decide that the amendment of the gentleman from Storey (Mr. DeLong) is not in order, as it is an amendment in the third degree.

Mr. DeLONG. Well, let it come in by general consent, overlooking the point of order. I will ask a suspension of the rules, in order that I may offer that amendment.

The CHAIRMAN. That motion would not be in order.

Mr. HAINES. I had the honor of occupying a seat in the previous Convention, in which this subject was discussed for six or seven days, and we then put in this provision as it now stands, in a form which seemed then, at least, to be generally satisfactory. Now, I find members here from Storey County, who apparently feel called upon to give us four or five hours more of discussion, upon a subject which we have already discussed until it has become absolutely a stench in the nostrils of the people.

Now, I assure gentlemen that one thing is certain—that unless our taxes can be made uniform and equal, we never can have a State Government in Nevada. That question may as well be settled at once. If our mining property has got to go untaxed, for the benefit of the few, then you never can have a State Government.

Mr. DeLONG. I desire to ask the gentleman a question, because I want to see whether we can agree or not, and, if possible, come to a conclusion on this question. Would the gentleman vote for leaving out all reference to the mines?

Mr. HAINES. The gentleman from Ormsby, our President, has a substitute which will satisfy me. There is no use of debating this question. We have some influence in this Territory, and I tell you plainly that my constituents never will consent to be taxed for a State Government, unless the tax shall be made uniform and equal. Your proposition to tax the net proceeds, if it went to the people, would never be heard of again on earth. I venture to say, if we were to adopt such a provision, that there would be found no net proceeds of the mines, if the State should last a thousand years. I am satisfied that my constituents will never submit to anything of the kind, and they have discussed the subject for weeks and months gone by.

Mr. DeLONG. That kind of talk is not going to drive me at all, because I could, if I please, retort by saying that the proceedings of the previous Convention to which the gentleman has referred, so stunk in the nostrils of the people that the people voted its action down, and very harmoniously too, there being hardly a dissenting voice.

Mr. NOURSE. I believe the gentleman from Storey proposes to amend, by providing that mines shall be taxed only on their net proceeds. Now, if he will add that farms, and saw-mills, and other property shall be taxed only on their net proceeds, there will be some degree of fairness in his proposition.

Mr. DeLONG. And lawyers' offices?

Mr. NOURSE. Yes; and lawyers' offices. [Merriment.]

Mr. STURTEVANT. Now, this is where the railroad comes in, full bulge. [Laughter.] I think I can hear the whistle tooting now. And here is the opportunity for gentlemen to show their generosity. If they have any generosity, the gentlemen from the "cow counties" would like to see it just about this time. [Laughter.]

The several amendments which had been offered were again read, and also the section as it would read when amended as proposed.

Mr. FRIZELL. The question arises in my own mind, if in the taxation of the mines only the proceeds are to be taxed, whether or not that will include mining property? The Supreme Court may decide that the mines include the hoisting works over the mine—and I believe it has already been so decided in California—that if you build a mill, or hoisting works upon the mine, it becomes a part of the mine.

Mr. DeLONG. Until it is removed, it does not recede from it.

Mr. BANKS. I do not think it is liable to that construction, but, at all events, any objection on that score can be avoided by a verbal change, which I will propose here, namely, to strike out the word "mines" from the proposed amendment, so as to read, "including mining property;" then this last provision will cover the ground, and I think that will satisfy the Convention.

Mr. FRIZELL. It will satisfy me.

Mr. BANKS. I will move that amendment, or make it a part of my amendment.

Mr. DeLONG. I understand that the gentleman proposes now to offer an amendment to the language occurring in the middle of the section: is that in order?

The CHAIRMAN. The amendment can only be altered or modified if no objection is made.

Mr. DeLONG. Well, I will withdraw my objection. [Laughter.]

Mr. BANKS. I do not propose, Mr. Chairman, to indulge in any extensive speech on this subject, at this time, nor to inflict any lengthy remarks upon this Convention in regard to my amendment. I have made this modification of my amendment, suggested by the gentleman from Storey on my right, (Mr. Frizell,) because it seems to me to make more clear what I intended to express.

Mr. STURTEVANT. In order to understand the question before the Convention, I would like to ask a question.

Mr. FOLSOM. I believe the amendment is in such a shape now, that it proposes to tax mining property only. Is that the case?

Mr. BANKS. Yes, sir; as other property is taxed.

Mr. FOLSOM. Then I would ask, would not mining property be taxed as other property is taxed, any way, under a general law, without any necessity for a provision of this kind?

Mr. BANKS. In reply to that I wish to say, that not only in California, but in this Constitution framed by the former Convention, which we have adopted as our basis, there has always been a distinction made between mines and mining property. I propose to preserve that distinction, because I consider it a legitimate and proper distinction. Mining property is considered to embrace all the improvements on mines, and that is included with and taxed as other property is taxed. Mills, hoisting houses, and all the other property connected with mining operations, which is distinct from the mine itself, have been taxed as mining property, while the mines themselves have never been taxed. That is a distinction which I consider a very reasonable one, and it has been kept clearly in view by these words, "including mines and mining property." If the members of the former Convention had not clearly recognized that distinction they would not have used the

the use of words, but would have said "mining property" alone, or "mines" alone. So much upon that point.

Now, I claim that there should be a distinction made, in regard to taxation, between the two classes of property—if you can designate mines as property—for this reason: Property, as found in real estate—in farms, fences, town lots, and buildings—is essentially and intrinsically different from that kind of property which is designated under the head of mines. Let us choose an illustration, familiar to all, of the principle I have advanced. Suppose that you, Mr. Chairman, were to invest ten thousand dollars in a farm, while I at the same time invest ten thousand dollars in a mine. Now, in the ordinary course of a legitimate transaction, if you expend ten thousand dollars in addition to the amount originally paid, your farm will be worth twenty thousand dollars. It is true, the proceeds may fail for one or two years, or more, but still your property retains an inherent value, at which it may be appraised, and of which it cannot be divested by the failure of crops for one, or two, or even more years. To be sure your house or your barns may be burned down, or your fences destroyed, but these are things which may be guarded against. By means of insurance they or their value may be placed, in a considerable degree, at least, beyond the reach of danger. But how is it with my mine? If the same rule applied, my mine should be worth twenty thousand dollars also. But we find that the rule which applies in your case does not operate in regard to my mine, because we find that in a great number, if not in an absolute majority of instances of that kind, the expenditure has not really added to the value of the property, but, on the contrary, has demonstrated the fact that it is nearly if not entirely worthless. Now, sir, I claim that that shows a marked difference between these classes of property—a difference which we ought to recognize. One kind of property has an absolute, inherent value, while the other, instead of an inherent value, has only the chance of finding something of value, to constitute its valuable characteristic. That is all that can be claimed of any undeveloped mine within the borders of this Territory. It has no value except that kind of value which is connected with a lottery, to wit: the chance of obtaining something of value.

A very serious objection to classing these two interests together—the mining interest and the other property interests—in regard to securing a revenue from them, is this: that it is next to impossible to place anything like a proper value upon a mine. But you can by proper legislation secure the placing upon the statute-books of the State of such laws as will enable the State to obtain from the proceeds of the mines, gross or net, as the Legislature may choose to determine, a revenue which will be very considerable in amount. I do not suppose that there is any doubt that the Federal tax, under the recent law of Congress, will be obtained from this source. There will be really no more difficulty in determining the proceeds of a mine, whether net or gross, and certainly not in determining the gross proceeds of a mine, than in determining what amount of license should be levied upon a merchant, when all such licenses depend upon the amount of monthly or quarterly sales. Now upon the same principle, and in something like the same mode, the monthly or quarterly proceeds of mines can be determined with facility.

Mr. HAWLEY. Mr. Chairman: A gentleman familiar with the subject which is about to agitate this Convention—for I conceive that this discussion has but just commenced—has declared that the mines are the "nigger" of this coast; that they are the "*noli me tangere*" of the body politic; that they cannot be touched, whether for good or for ill; and that they must be left in that anomalous position, which, in comparison with every other description of property, they have occupied on this coast, ever since the first discovery of the gold fields of California.

Now, sir, while this statement of the case may seem plausible to some, I conceive that it is entitled to no weight in this Convention. I conceive that our duty in the premises lies in the determination of the question, whether or not that element of our country's wealth, which has elevated so many men from penniless circumstances to princely incomes, shall be made to pay its proper share towards the support of that Government which we are about to inaugurate. The manner in which the public lands have hitherto been held in the State of California, and in which they are still held, both in California and Nevada—at least a large proportion, not only of the arable, but other lands in this Territory—has been such, or the tenure of the occupants of these lands has been and is such, that, as a general thing, the occupant has been compelled, whether willing or unwilling, to pay his taxes upon the possessory right of occupation.

The emigrant who comes into our valleys, or settles upon our hill-sides, building his cabin worth perhaps fifty dollars, is visited by the Assessor when he makes his round. The poor emigrant is questioned, and not only that cabin which has cost him fifty dollars and which barely serves to shelter him and his family from the blasts of winter is taxed, but also his possessory right to the few acres of sterile land from which he eke out his scanty existence. Now, on the other hand, the question before us is, whether or not the mines, those lands in our Territory which have raised men to princely fortunes, shall be taxed. I maintain that there is no justice in exempting them from taxation. And while I believe, for my own part, that any Court of competent jurisdiction would set aside a judgment assessing a tax upon a mine, as such, still I believe that the possessory right to that mine, and the advantages, pecu-

nary and otherwise, which that right gives to the possessor, is as legitimately a subject of taxation as the miserable cabin I have alluded to, or the few barren acres held and tilled by the man who owns and occupies it.

Mr. DeLONG. Will the gentleman allow me to ask him a question? Will he consent to the passage of this section after striking out the words, "including mines and mining property," leaving it so as to provide simply that all property, both real and personal, shall be taxed? I desire to ascertain whether or not we can come together and agree upon something which will be satisfactory to all.

Mr. HAWLEY. I will say in reply to the gentleman, notwithstanding this amendment now before the Convention is still persisted in, that while the proposition he now makes in some degree does away with the objections which I have felt compelled to urge, in the position which I occupy as a representative of one of the "cow counties," although I must be permitted to suggest that it does not meet with my entire approval, yet if he, as he is the author of this amendment, is disposed to meet me on half way ground, he will not find me backward. And inasmuch as the gentleman professes to be willing to make a compromise, I suggest that this pending amendment be temporarily withdrawn, and the amendment which he wishes to offer proposed to the Convention.

[Mr. Warwick in the Chair.]

Mr. DeLONG. I suggest, then, that we vote down the amendment proposed by the gentleman from Humboldt, (Mr. Banks), in order that we may get this amendment in.

Mr. HAWLEY. I do not know that we can vote it down.

Mr. FITCH. I desire to say a few words to the Convention, and particularly to the "cow county" representatives, upon this question. I occupy, in this respect, somewhat of an anomalous position. I represent a mining constituency, a constituency, a majority of whom I believe to be opposed to any taxation of the mines, and yet I am in favor of mining taxation, and such has been my position from the first. I have publicly advocated that policy, both with my voice and pen; and although my views have been perfectly well known on that question, yet my constituents have seen fit to send me here. Like the gentleman from Douglas, I can see no good reason why the mines should be exempted from bearing a just share of the public burdens. I cannot see any reason why mines possessing a definite market value should not pay for the support of the Government, just the same as a ranch or any other species of property. I conceive, furthermore, that the greatest expenses of our State Government will be incurred necessarily in its judicial department, and as the time of Courts in this State (as I hope it soon will be) will be occupied, to a very great extent, in trying mining suits; as three-fourths of the litigation of the State will be on the subject of mines; as the expenses of the Government in the protection of the mining interest will be greater than for all the other property in the State, I can see no good reason why the mines should not bear a just proportion of the public expenses. Yet, on the other hand, I really can not see any good reason why the mines should be taxed upon their gross proceeds, because if you levy a tax upon the gross proceeds indiscriminately, you tax a mine from which it costs nearly its full value to extract the precious metals, just as much as you would tax one from which the gold and silver may be extracted for one-tenth of its value. I believe that the only proper basis, after all, is, to tax mines upon their market value. If a mine is worth a thousand dollars per foot, if a man owning in such a mine can take that amount for it in the market, and get it in gold coin any time he pleases, I do not know that there is any good reason why it should be taxed for any less amount than it would be if it were a ranch worth a thousand dollars per acre.

Yet, believing this, holding these views of the matter, I nevertheless hope that my friends from the "cow counties" will consider the peculiar circumstances by which we are at present surrounded. It must be remembered that we have to submit this Constitution to the people; to a people imbued with strong prejudices; to a people whose passions may be aroused very easily on the subject of taxing the mines. If we provide for levying an indiscriminate tax upon mining property, men will go before the miners throughout the Territory and tell them that our Constitution taxes the mines, and imposes upon them a burden which they cannot bear, and which will be destructive to their interests; and in that way they will succeed in defeating the Constitution. Now I respectfully submit to my friends from the agricultural counties, and to the whole Convention, whether, if you strike out the words, "including mines and mining property," you do not leave the provision just as strong, for all practical purposes, as in the shape in which it now stands. It says:—

"The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property."

Why not let it stop there? I ask if it does not already include mines and mining property, without putting in the words "mines and mining property?" If it does not, then I do not understand the English language.

Mr. NOURSE. I see that the Constitution of California provides as follows:—

"Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law."

Now I have been told—I do not know that it is so—that in California, under that provision, the mines are not taxed.

Mr. FITCH. I do not know that there has

from a decision on that subject; I think there has not.

Mr. NOURSE. What is the practice, then, in regard to taxing the mines?

Mr. FITCH. It is to tax the dust wherever they find it. But here our mining is differently conducted. We have our quartz ledges, which are fixed and well defined, while in California, as a general thing, the mines have no such definite market value.

Mr. DeLONG. I will state, that in California they tax the proceeds where there are ledges, and they can get at them, and the property also.

Mr. FITCH. The mines there have seldom any fixed, definite, easily-ascertained market value—merely a hill or a tunnel, or a placer claim, rich perhaps to-day, and poor to-morrow—but here we have our silver-bearing quartz ledges, which have a definite, fixed market value, just as certain as the market value of a ranch, or any other piece of property. We know that certain strata of quartz produces so many hundred tons of ore, which will average so much per ton, and we can see the results. A man claims to own a certain definite and fixed proportion of a mine, and it bears a certain definite and fixed value, like other property. A change in the system of mining, unknown until now in the history of our country, has taken place. Corporations have taken the place of individual and unincorporated effort. Mining stocks are issued, and those stocks have a market value. Therefore, I say, that the piece of paper which entitles the holder to so many feet in the Gould and Curry Mine, or any other mine which has a fixed and definite market value, should be taxed to the extent of that value. And I maintain that under a proper construction of our Constitution, (and we have no right to anticipate an improper construction by our Courts), when we say that property of all kinds shall be taxed—"all property, both real and personal,"—mining property will not escape. We necessarily and by implication, include mining property, and stock in the companies owning the mines. Now I will submit the question to my friend from Washoe, (Mr. Nourse), supposing that we should strike out "mines and mining property"—words which I consider as mere surplusage, adding no vigor or force to the section—and supposing that the first State Legislature should provide for the taxing of mines by law, whether such a law would not be held constitutional?

Mr. NOURSE. I appreciate fully the gentleman's position. I desire as much as any one to avoid unnecessary debate, and I will tell the gentleman now the reason why many of us are unwilling to leave the section as it is, merely striking out these words, "mines and mining property." It is simply this: that we fear, whether rightly or wrongly, that a certain argument may be successfully used in the Courts—that because the former Convention had put in those words and this Convention had stricken them out, therefore it may be claimed and used as an argument—with what effect we do not know—that this Convention did not intend to include mines and mining property. Now an amendment has been shown to me which satisfies me perfectly, and I hope an opportunity may be given for its introduction and consideration.

Mr. FITCH. Mr. Chairman—

Mr. HAINES. Will the gentleman excuse me if I interrupt him one moment. If I could be satisfied that the mines would be regarded as property, I would be satisfied with the amendment just proposed, to strike out the words "mines and mining property;" but as an old Californian, who has seen the workings of the California Constitution for the last thirteen years, I am by no means satisfied on that point. I know what has been the invariable construction there, and that there has never been a dollar received for taxes from the mines, in any shape, except for taxes on bullion, dust, and the materials used in working the mines. I believe that the gentleman from Storey, (Mr. DeLong), will remember that that is the case: I believe, also, that all the members of this Convention are aware of it. It is generally understood that no mining property in California is taxed, notwithstanding that the Constitution of California says: "All property shall be taxed equally." I do not think, as has been said, that a case ever came before the Supreme Court of California involving the question, but I know, however, that it is generally the opinion throughout the State that the mines are not taxable property.

Mr. FITCH. All of which is true. I will, however, explain my position in a moment. Suppose the first State Legislature, in passing a revenue law, should fail to provide for the taxation of the mines, what would be the result? Some person owning a sufficient amount of taxable property to make it for his interest to test the question, will test it, and carry his case to the Supreme Court. I ask you, sir, and every lawyer here, if it would be possible for the Supreme Court to decide anything else than that a revenue law which exempted a large and valuable class of property from taxation was unconstitutional, under such a clause as this, providing for a uniform and equal rate of taxation of all property, both real and personal? It seems to me clearly impossible that they should decide otherwise. As the gentleman from Douglas (Mr. Haines) has said, the question never was tried in California, and if it should be, the difficulty would occur, that there has been as yet no definite, certain, fixed market value attached to the gold mines.

Mr. HAINES. Will the gentleman permit me to correct him. They have in California quartz mines, copper mines, and other mines, some of which, certainly, have a definite cash value.

Mr. FITCH. Then I venture to say that any man who chooses to carry the question up to

the Supreme Court, can get a decision, and that may law exempting these mines from taxation, will be decided unconstitutional. That is my belief, and if that belief be well founded, I ask what is the use of putting in these words—"including mines and mining property"?

Mr. HAINES. We put them in so that there can be no misunderstanding about it, when we shall have framed and adopted our Constitution.

Mr. FITCH. And yet, at last, the gentleman is obliged to depend upon the Legislature to carry out the provisions of the Constitution, and if the Legislature fails, what is he to do about it, even if we do insert the words "mines and mining property"? A portion of our last Territorial Legislature was instructed—and in my opinion very improperly—to exclude the mines from taxation, and such may be the case hereafter. Therefore, if we put in those words, "mines and mining property," and there happens to be in the Legislature a majority opposed to the taxation of the mines, the Legislature would, probably, neglect or fail to tax the mines, and then what would the gentleman do about it? He would have to carry the question to the Supreme Court at last, and, in my opinion, we can add no force at all to the provision by including these words of mere surplusage. They would not add any value to the provision, while gentlemen know very well that they would constitute a strong argument with many, against the adoption of the Constitution. Why, sir, if you put in those words in substance—modify them in whatever way you will—you compel us to go before a people liable to be highly excited on this subject, and to hear the arguments of our opponents against the taxation of the mines. If you do that, I believe the people will vote this Constitution down, to a dead certainty. Now, I tell the gentleman from Douglas (Mr. Haines) that I am earnestly—as I believe he is, and every other gentleman on this floor—in favor of the adoption of a State Government. I think the time has come when we must have it, when our interests imperatively demand it, and I am in favor of doing anything which we can honorably and honestly do to secure that end. I am in favor of taxing the mines; I say that openly and fearlessly, and if I knew I was walking to my political tomb, I would still say it. In my opinion, it is right, and I am, and always have been, in favor of it. But, at the same time, if you put in these words—which are unnecessary, which are surplusage, which add no force or vigor to the constitutional provision—I say you thereby insure the rejection of the Constitution, and you will have no State Government at all.

Mr. CROSMAN. Will the gentleman allow me to ask him a question? I understand that he is in favor of taxing the mines, and thinks that this section would be just as operative to secure that end with these words out of it, as it would be if they were left in; and that if they are allowed to remain in the Constitution it will be defeated. Now I desire to ask the gentleman if he thinks that is a fair and honorable way to treat a constituency. Now, sir, I represent a mining constituency, as the gentleman from Storey does, though mine is somewhat different in its circumstances from his; the mining region he represents being confessedly the richest and best in the State, while our mines are only in their infancy, or wholly undeveloped. We do not know whether they are worth anything or not; and yet, they have a certain value in the market. For myself, though I am opposed to taxing the mines indiscriminately, yet I am in favor of taxing those which are yielding a revenue. I think that is nothing more than fair. But, sir, I want our Constitution to go to the people fairly and honorably. Let us agree among ourselves what we want, and what we mean, and then let the Constitution express our meaning plainly, and go to the people upon a fair and square basis.

Mr. CHAPIN. I was somewhat surprised at hearing, and I certainly very much regretted to hear, the remarks of my colleague (Mr. Fitch). If I entertained the views he does, I would certainly favor the retaining of the language which was contained in the article originally, and let it be plainly and fully understood. But I do not believe that it is right to do any such thing as to tax the mines at their market value. Why, sir, what would have been the result in the past year, if we had taxed all our mines at the full market value which they bore at the time of assessment? We then assessed the Gould & Curry at six thousand dollars per foot, while now it is worth fifteen hundred.

Mr. FITCH. Well, I had a lot up in Virginia then, which I could have sold for two thousand dollars, but I could not get four hundred dollars for it now.

Mr. CHAPIN. Savage sold for five or six times as much then as now; Ophir was worth four thousand dollars, and it is only worth seven hundred now; Pride of the West was sold for two hundred and seventy-five dollars then, while now it is begging for purchasers at two dollars a foot; Daney was selling readily at that time at five hundred dollars, and now it ranges from forty to sixty dollars; and Wide West not long since was five hundred or six hundred dollars, while now it is sold at forty dollars, or thereabouts.

Mr. NOURSE. Have not the mines, prior to this, gone up, as much as they have now gone down? Did not the Gould & Curry go up in a single year from two hundred dollars to six thousand dollars per foot? And have not two mills gone down also? Does not all property vary in price?

Mr. CHAPIN. The gentleman may refer to these matters when I get through; I do not mean to be long. Now, I say it is not right to tax the full value upon property which is so fluctuating and uncertain as this, as we would

put the full value upon farming or ranching property. Why, it appears to me that is so self-evident that no gentleman ought to ask it. It is altogether wrong, and therefore I express my surprise that my colleague from Storey county, representing a community where we have such an amount of mining property, should say that in his opinion it ought to be taxed at its full value. Tax the proceeds, if you please, but do not burden the mines with any such taxation as that. By adopting such a course, even at a rate of taxation of one per cent. you could tax the Gould & Curry seventy-two hundred dollars, assessing the stock at six thousand dollars per foot.

Mr. HAWLEY. Will the gentleman allow me to interrupt him for a moment, on the part of those "cow-counties," which have to bear the blame of this proposition to tax the mines? We are not so wild as to anticipate that the result of taxing the mines will be anything like what the gentleman seems to apprehend. I have endeavored to express my views and those of my constituency, but I certainly should not express such views as those. I trust I am more reasonable than that in my calculations.

Mr. CHAPIN. I should hope so, and I am glad to hear it. Let us reason together, and fix this matter up in a manner that will be right, and mutually satisfactory, for if we go to either extreme, this Constitution is as dead as it can be. I would utterly despair, if you should impose any burden similar to that now provided for in this Constitution, of ever passing the Constitution. If you do that, I am willing to take my hat and go home, for it is wholly in vain to present a Constitution containing any such provision to the people of this Territory.

Mr. JOHNSON. I do not know whether it would be proper at this time—and I would not like to obtrude my views, nor present any amendment for the consideration of the committee before it is properly in order—but I have an amendment here, however, which I wish to offer as a substitute for the whole section whenever it will be in order, and if there is no objection, I will read it for information.

SECTION 1. The Legislature shall provide by law for the assessment and collection of taxes by a uniform rule, so that taxes shall be assessed and collected on all property, possessory rights and claims, according to their true value in money.

At a proper time I wish to offer this as a substitute for the entire section. A single word, however, in regard to the arguments which have just now been advanced by my friend from Storey, (Mr. Chapin.) As that gentleman tells us, Gould & Curry has receded, and Ophir and many other mining stocks are in the same category—all of which is quite familiar to every gentleman here. But there is one theory which the gentleman has apparently forgotten, and that is an argument to which I listened, and he replied (and ably, too, I will say, assuming his premises to have been correct,) in the first Constitutional Convention. The line of argument referred to was substantially this, that while the amount or value of taxable property may be very greatly depreciated, yet the ratio of taxation must be reduced in like proportion. That is, if you tax the Gould & Curry at one time at six thousand dollars per foot, and another mine at fifteen hundred dollars per foot, and so on through the list, carrying out the same relative rate of assessment through the whole range and scope of your taxable property, taxing everything at the like inflated valuation, you will have perhaps four times the amount of taxable property that really exists at the present time; yet, while you thus increase the value, you must at the same time decrease the ratio of taxation, and only levy your assessment at such rate as will suffice to raise a given sum. The difference in taxation at different periods of time is not solely in the amount of property subject to taxation, but in the prevailing rates of taxation. If in one instance we should levy a tax of twenty-five cents on the hundred dollars, in the other you would be compelled to levy a tax of one hundred cents, in order to obtain the same required amount. What is the difference, then, whether you tax property at a low valuation, or at an increased, or, if you please, at a fictitious valuation, provided you have the same amount to raise? The result is the same if you levy a twenty-five-cent tax on an assessment of six thousand dollars, as if you levy a dollar tax on an assessment of fifteen hundred dollars; and therefore I cannot see the potency of the gentleman's argument.

Now I will say, in brief, that this is the position which I took in the former Convention—a position which, however far it may be from suiting the views of others, I know is at least in accordance with the views of those whom I represent, and, far beyond that, in accordance with my own sense of right and of duty—that is to say, that all property that has any value, in proportion to that value should be taxed for the support of our government. This, sir, is my position, and I do not seek, nor will I, by any word to which I shall give utterance on this floor, nor by any amendment which I propose, seek to escape the full effect of the proposition that all property, according to its cash value—that is, its money value, if you please, using the language which I propose to employ in this amendment—shall be taxed proportioned upon that value. When this is done, we shall have recognized a principle founded in truth and justice, and we shall not have done that which will tend to confuse or blind the sense and understanding of the people. We shall have done more than that: we shall have established a firm and just basis upon which our government should rest—that all property, according to its full value, shall be taxed equally—that every individual within and protected by the government, shall contribute his proportion to the support of that government. Now,

sir, if we are not prepared to meet the issue on that basis, then for one I will say that I want no State Government. I see that the hour has arrived for adjournment; and as I propose to speak further on this question, I will give way.

Mr. FITCH. I move that the Committee rise and report Articles VIII and IX, as amended, and also report progress upon Article X, and ask leave to sit again.

Mr. DUNNE. I am opposed to that motion, for the reason that I want the Convention to finish this Article on Taxation while we are engaged upon it.

The question was taken, and Mr. Fitch's motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article VIII, entitled Municipal and other Corporations, and Article IX, entitled Finance and State Debt, and had made some amendments thereto, in which he was instructed to ask the concurrence of the Convention. Also, that the Committee of the Whole had had under consideration Article X, entitled Taxation, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was accordingly granted to sit again upon Article X.

Mr. CHAPIN offered the following resolution, which was adopted:—

Resolved, That the President of the Convention be requested to place upon the standing committees such members as have recently taken seats in the Convention and have not been appointed upon any of the standing committees.

The hour of five o'clock having arrived, the President declared the Convention adjourned under the rule, until nine o'clock, A. M., to-morrow.

EIGHTH DAY.

CARSON, July 12, 1864.

The Convention met at nine o'clock, A. M., and was called to order by the President.

The roll was called, and all the members responded except the following: Messrs. Ball, Collins, DeLong, Earl, Gibson, Haines, Jones, Morse, Tozer, Wellington, and Williams. Present, 28; absent, 11.

On motion of Mr. DUNNE, leave of absence for the day was granted to Mr. DeLong.

No clergyman being in attendance, the usual morning prayer was dispensed with.

The journal of yesterday was read and approved.

APPOINTMENTS ON COMMITTEES.

The PRESIDENT announced that, in accordance with the resolution adopted yesterday, he appointed Mr. McClinton on the Committee on State Seal and Coat of Arms, and Mr. Haines on the Committee on Phraseology and Arrangement.

REPORTS OF COMMITTEES.

Mr. KINKEAD, from the Committee on Phraseology and Arrangement, presented the following report:—

Mr. President: Your Committee on Phraseology and Arrangement of the Constitution beg leave to report the following arrangement for the several articles referred to them:

1st. Resolution adopting the Constitution of the United States;

2d. Ordinance;

3d. Preamble;

4th. Article I—Declaration of Rights.

Your committee also recommend the insertion of the word "City," after the word "Carson," in the said resolution.

Also the substitution of the words "and this," in lieu of the word "which," in the seventh line of the engrossed copy of the Ordinance.

Also to strike out the word "the," where it occurs before the word "citizens," in the third section of the Ordinance.

Respectfully submitted.

J. H. KINKEAD, *Chairman.*

The report was adopted, and the several amendments proposed by the committee were agreed to.

Mr. TOZER, from the Committee on Engrossment, reported that that committee had examined and compared Article II, entitled Right of Suffrage, Article III, entitled Distribution of Powers, Article IV, entitled Legislative Department, and Article V, entitled Executive Department, and found the same correctly engrossed.

The report was accepted, and the several articles reported were placed on file.

Mr. HAWLEY moved that the several matters reported from the Committee on Phraseology and Arrangement be referred to the Committee on Enrollment.

The PRESIDENT suggested that these matters would have to be reëngrossed, as certain amendments had been made.

Mr. BANKS. It is hardly necessary, because no changes have been made beyond a half a dozen words, and I suggest that the corrections be made in the margin of the engrossed copy in red ink, and the indorsement signed by the Secretary, so as to shew that the corrections have been made. That is the customary course, I believe. I will move that the enrolling committee be instructed to make the corrections in accordance with the action of the Convention upon the report of the Committee on Phraseology, and that a note be made on the engrossed copy, to the effect that the corrections were made in accordance with that order.

The PRESIDENT. I find, on examination, that the Secretary has already made the indorsements in red ink, and they are signed by him as Secretary.

Mr. BANKS. Very well: that covers the whole ground.

Mr. TOZER. The Secretary states, I un-

port, that the amendments are made upon the report of the Committee on Phraseology.

The SECRETARY. Yes, sir.

Mr. BANKS. I withdraw my motion, as that is all that is necessary.

The PRESIDENT. I will suggest that there should be a motion, to go on record, in order to show hereafter why the changes were made.

Mr. BANKS. I will move then that all the changes made by the Convention upon the report of the Committee on Phraseology be entered by the Secretary, over his signature, on the margin of the documents.

The question was taken, and the motion was agreed to.

The question was taken on the motion of Mr. Hawley, that the several matters reported by the Committee on Phraseology be referred to the Committee on Enrollment, and it was agreed to.

EVENING SESSIONS.

Mr. DUNNE. I will state to the Convention, in explanation of a resolution which I am about to offer, that the Convention is progressing very rapidly with its business, but the Committee on the Judiciary have not yet completed their labors, and will require an opportunity to hold another session. There is no time when we can get the committee together unless it is in the evening, and for that reason, believing that one more session will enable the committee to complete the report on the Article entitled Judicial Department, I offer this resolution:—

Resolved, That in consideration of the necessity of another evening session of the Judiciary Committee, the operation of so much of the standing rule as relates to evening sessions be postponed until to-morrow, the 13th instant.

The question was taken, and the resolution was adopted.

INSTRUCTIONS TO THE JUDICIARY COMMITTEE.

[Mr. CROSMAN in the chair.]

Mr. JOHNSON. I offer the following resolution:—

Resolved, That the Committee on the Judiciary are instructed to embody such provisions in the judicial article of the Constitution as will provide for the election of a District Judge in each organized county of the State, (except Storey County, wherein there shall be two District Judges,) with such additional jurisdiction as is now conferred upon County or Probate Courts, so as to dispense with such County or Probate Courts.

I should feel reluctant to join in any attempt to make radical or material changes in our judiciary system, in any respect, unless I thought it quite clear that great compensating advantages would be gained thereby. We have now had two meetings of the Judiciary Committee, I believe, and we find that some diversity of opinion exists among its members upon the judicial features of our Constitution, or in respect to the judicial system as established in the old Constitution, adopted as the basis of our action, and in the Constitution of California. We have encountered a great deal of difficulty in one respect, namely, in arranging the judicial districts in such a manner as to accommodate the greatest possible number within the respective counties, and at the same time to restrict and limit the expenditure within reasonable and proper bounds. Now it must occur to gentlemen, I think, that if we can, without any increase of expenditure, so arrange our judiciary system as to have a Court with an enlarged jurisdiction in each of the several counties, we shall in that way greatly subserve the interests of those who sent us here. And I think by the adoption of the proposition involved in the resolution, we can obtain and establish such a judicial system, which, while it dispenses with County and Probate Courts, will enable us, instead, to have a judge in each county, upon whom can be conferred the jurisdiction ordinarily possessed by the District Courts, as well as that exercised by the County and Probate Courts. I have made some estimates of the relative expense of these two systems, comparing one with the other. On the one hand, I take as a basis the salaries of the County and Probate Judges, as they are now fixed by territorial laws, and add to these the rate of salary likely to be established for the District Judges, fixing it within what would be reasonable and proper bounds, taking as a basis five District Judges within the State, and one County or Probate Judge in each county. I then make a like estimate upon the other proposition, as embodied in this resolution, of having one District Judge in each county, except Storey County, and there having two judges. I fix their respective salaries at the same rate as that of the District Judges in the different counties. I find upon these estimates that the expense of the entire system here proposed does not exceed that of the other more than two or three thousand dollars a year. It must be evident to every gentleman here, that if the difference is no greater than that, or even if the cost were as much as ten thousand dollars a year more, it would be an expenditure for which the people would be amply repaid, by the additional benefits secured on account of having a court in each county. It was chiefly for the sake of eliciting the views and opinions of other members, that I presented the resolution at this time. I hope we may have some discussion upon it, and if it is the judgment of the Convention that a system such as contemplated by the resolution I have offered should be devised, then the Judiciary Committee, before proceeding further with its labors, can proceed to embody the proper provisions in the Article which they shall report.

Mr. DUNNE. I concur entirely with the views of the gentleman from Ormsby as to the propriety of the adoption of the resolution presented by him. I think no alteration of this Constitution which we have adopted as a basis, in respect to the judiciary system, could be presented to this Convention, that would be more satisfactory than this, to the people of the out-

side counties, at least. For those counties which are in the immediate neighborhood of the capital I do not pretend to speak; but I am sure that it will be beneficial in its operation in those large districts known as Humboldt and Lander Counties, and others so far removed from the capital and so large in extent. If two of these counties are embraced in one judicial district, the residents of one of them, at least, must be situated at a distance of from eighty to a hundred miles from the residence of the District Judge, and therefore, for all chamber business required to be performed, it would be necessary to travel that distance of from sixty to one hundred miles. That would amount almost to an absolute denial of justice. There is another feature of this proposition to be regarded, and that is, that those counties I speak of, covering one half of the area of this Territory, are so large that in the course of the natural growth of the State we may expect that in time they will in themselves each constitute a large judicial district, after becoming subdivided, as they naturally will be, by reason of their great extent. Therefore, as one of the representatives of one of those counties, I heartily indorse this resolution, and I think I am authorized to state to the members of this Convention that the proposition it involves meets with the hearty sanction of all the delegates from Humboldt and Lander Counties. I would like, however, to hear an expression of opinion on the subject from gentlemen representing counties nearer the capital, and which are smaller in extent. If it satisfies them, I think it will be satisfactory to all. There is one other point involved, however, and that is, the question whether two judges are sufficient for Storey County when all the county and probate business is thrown upon those two judges; but that is a matter which I presume the Storey County delegation will ventilate.

Mr. HAWLEY. For all the reasons which have already been presented by the two gentlemen who have spoken upon this resolution, I heartily indorse it, and I trust it will obtain the sanction of the Convention. The county of Douglas, which I represent, stands somewhat in the same category in regard to chamber business as the county of Humboldt. In committee last evening, we made a careful calculation of the manner in which the State should be divided into judicial districts, and we could come to no other conclusion than that Douglas should be attached to Esmeralda County, as a part of that judicial district, in which event we should have to travel nearly one hundred miles to obtain, for instance, a restraining order, or to have one set aside. For this reason I trust the Convention will adopt the resolution, and that the feature which it contemplates will be embodied in our judiciary system.

Mr. FITCH. For my own information, as well as for the information of the Convention, I would ask the mover of this resolution if it is not contemplated that under its operation each county shall establish and pay the salary of its own District Judge, instead of having it paid out of the common treasury.

Mr. JOHNSON. The idea is, although not embodied in the resolution, that these judges shall be paid by the counties respectively. It is an immaterial matter, however, because, although the money may be paid from the State Treasury, it will have to be first paid into the State Treasury by the counties; and if it is to be paid directly by the counties, of course there will be so much the less for them to pay into the State treasury; so that, whether it first passes to the County treasury and thence to the State treasury, to be drawn therefrom by the Judges, or whether it is drawn at once from the county treasury, would seem practically to make no difference.

Mr. FITCH. Excuse me; I think it makes a good deal of difference, because the counties paying the largest amount of taxes would have to contribute towards the payment of the salaries of the Judges of other counties.

Mr. JOHNSON. Excuse me; I likewise propose that the Judges shall be paid by the counties. My idea is derived from the old Constitution, and it is, that all the judicial officers shall be made preferred creditors, so as to insure their payment in cash, and thereby we offer such an inducement as will enable us to procure the services of men who, by their character, talents and legal attainments, are best qualified to fill those positions. If it is left so that the payment of such salaries may be dependent upon the condition of a County Treasury, which is liable to temporary or permanent embarrassment, men may be deterred from occupying those judicial positions who would be the very best qualified to fill them. I believe the occupants of judicial offices should be so protected by law as not to render it necessary or incumbent upon them to embark in other pursuits, and I think most assuredly that they will, by law, be so protected. The provision we have in this Constitution in relation to the salaries of these officers should be retained, and should be made to apply to the judges of the courts in the different counties; and by having the advantage of a Judge and a Court in each county—having a Court at home—in my judgment the people will be well compensated for the slight additional expense. The provision I refer to relative to compensation is in the schedule, I believe.

As to Storey County, a provision might be incorporated making that county an exception. If gentlemen from Storey County do not deem it sufficient for the necessities of that county to have one court, an exception can readily be made and power lodged in the Legislature to provide, if you please, by a two-thirds vote for additional courts, if it shall at any time be deemed that there is a necessity for them. I

only proposed, in this resolution, to provide for embodying in the article the general framework of our judicial system; and, of course, there are many things in the way of detail which may be found necessary or proper to incorporate in the Constitution. The idea is, simply, to dispense, as a feature of our judicial system, as we find it now in the old Constitution, with County and Probate Courts, and confer their jurisdiction on the District Courts, with a view to having a Judge in each county. So far as salaries are concerned, I think it proper for us to fix them in the Constitution, at least for the time for which the first incumbents are to be elected, making such term say for two years, and leaving it to be fixed thereafter by the Legislature.

Mr. BROSNAN. I move to amend the resolution, by striking out the word "two," and inserting the word "three," so as to provide for three Judges in Storey County, instead of only two.

The question was stated on Mr. Brosnan's amendment.

Mr. BROSNAN. I heartily concur in the plan proposed by this resolution, and if the additional expense will be no more than two or three thousand dollars a year, I do not see why there should be any objection whatsoever, to the adoption of the resolution. Indeed, I agree with my friend from Ormsby, (Mr. Johnson,) that if the difference in expense should amount even to $10,000 a year, it would still be amply counterpoised by the great benefits to be derived by the people from the adoption of the system proposed. In the first place, under such a system, we have all the judicial business done in the county which could be done by the District Judge and by the County Judge of that county; that is to say, we have ample force on the bench, in each county, to discharge all the duties that could be discharged in that county by the District and County Judges, and we have those duties performed, too, more expeditiously, and more economically; and we, at the same time, obviate the necessity of an appeal from the County Judge, or, if you please, from the Justices of the Peace to the County Judge, and from the County Judge to the District Judge, and then again from the District Judge to the Supreme Court. We rid ourselves of all this delay and difficulty by adopting this resolution, and thus we avoid, as it were, two intermediate stumbling-blocks in the way of justice, wiping them out of our judicial system altogether. In each of those inferior courts, expenses are necessarily incurred, and time wasted by litigants, before they can reach the court of final resort.

Not only that, Mr. Chairman, but if you adopt the system proposed, you dignify the character of your judiciary in the several counties, and secure the respect of litigants for the courts, to a degree which, I humbly submit, they do not always challenge at the present time. Further than that, you also secure the services on the bench, of men of ability—men in whom the community can confide. You get men whose qualifications are known, coming from the neighborhoods in which they are elected, and known to all the citizens within their counties, and you avoid the great struggle which, aside from political considerations, would always be sure to arise, to a certain extent, under the old system of judicial districts comprising several counties in each, between the different counties of those respective districts, where men would naturally be combatting and struggling over the question of which county should present the candidate for District Judge.

As I did not propose to myself, when I left home, to occupy much of the time of this Convention in discussing any of the questions that might come before it, (although I have desired on several occasions to do so, on important questions arising in the Convention,) I shall leave other gentlemen to discuss this question more fully, if they desire to do so. I hope the resolution will be adopted, for I foresee manifold benefits likely to accrue to the community from the establishment of such a system.

Mr. HAWLEY. One word by way of suggestion. Under the present distribution of the revenues of our Territory, I believe it is provided that five-thirteenths of the taxes in each county shall be transferred to the territorial fund, to be applied to liquidating the territorial indebtedness; and a portion of that fund, as is well known, is applied to the payment of the judges under our present judicial system. Now, this serious objection, I think, will be raised by many of our citizens to the adoption of this provision, unless it can be obviated and removed in some manner; that if we continue to pay to the State treasury, under the State organization, the same *pro-rata* of the revenue received in each county, it must be apparent that out of what remains, (which has heretofore been used exclusively for county purposes), the county will be called upon to pay this additional charge for the salary of its judges. I am heartily in favor of the proposition, but I still think that in the wisdom of the Convention, some provision may and should be made to retain in the respective counties a portion of the amount hitherto paid to the territorial treasury, for the purpose of enabling the counties more readily to meet the additional expense required for the payment of the salaries of the county judges. In our county we pay the county judges fifteen hundred dollars per annum, and under this estimate we are expected to pay the district judge of the county four thousand dollars, which is a very heavy increase. I hope this suggestion will be taken into consideration, if it is deemed to be worth anything.

Mr. BANKS. I have considered this matter now, I suppose, about a half an hour in all, and I presume that most of the members of the Convention have not considered it much longer.

It is proposed by this resolution to direct the Committee on the Judiciary to make a radical change in the judicial system which has generally prevailed, and with which we have heretofore been familiar. Now, sir, it seems to me that that discretion proposed to be given to the Committee on the Judiciary is a correct and proper one; and I have found during the half hour which I have been considering the subject, not one good objection to it. But, at the same time, I do not think it is proper for this Convention, on so brief a consideration, to instruct the Judiciary Committee absolutely to do anything of the kind. I, for one, would very much rather risk the united judgments of that committee on so important a subject, than my own judgment, or the judgment of this Convention, upon so short a notice, in regard to making so radical a change. I think however, this resolution is one which it is very desirable for that committee to consider, and I hope, therefore, that the whole matter will be referred to the Judiciary Committee, to report just as they please; and when they do report, we can be prepared to consider the question, or at least when their report is brought up for final action. I would prefer that the resolution should be laid on the table for future consideration, but I shall not make that motion because others may wish to express their views. Before the final vote is taken, however, I shall make the motion to lay the resolution on the table, because I deem it improper to instruct the committee on so important a subject after so little deliberation.

Mr. JOHNSON. It will be seen, that some action will be necessary, other and further than that proposed by the gentleman from Humboldt, (Mr. Banks,) in order to meet this question, by authorizing a certain course of action on the part of the Judiciary Committee. As one member of that committee, I would scarcely feel myself authorized, so far as my vote would go, to incorporate in the report which the committee is to make, any provisions contemplating the establishment of such radical changes in our Constitution as are embodied in this resolution, unless I were so directed by instructions emanating from this Convention. We have adopted, as the basis of our action, the Constitution prepared by the former Convention. That Constitution embodies, in a general way it is true, what I must regard as certain instructions, from which I would not conceive myself at liberty to deviate materially, by making any such radical change as is proposed in the resolution I have offered, unless, as I before remarked, it were done directly under the sanction of the Convention. Now, the Judiciary Committee have had two meetings, and they have discussed the features embraced in several sections of this article on the Judicial Department, as contained in the old Constitution, and they have finally reached that point in their deliberations where it has become necessary to devise or adopt some general system, if not that proposed in this resolution, then something which is in conformity, or at least approximating to conformity with the system prescribed in the old Constitution. Members of the Convention, I am sure, will appreciate the importance—having in view the progress made in other portions of our work—of obtaining, at the earliest possible moment, a report from the Judiciary Committee; for I do not conceive that there can possibly arise in other portions of the Constitution yet to be acted upon, many vexed questions, and certainly none involving consequences so important to the people of this Territory, or State, as that which will be involved in the adoption of our judicial system. Now, if the Judiciary Committee, regarding itself as instructed by the previous action of this Convention, in adopting as its basis the Constitution framed by the former Convention, should proceed to embody in its report the same judicial features as are contained in that Constitution, and if, when they come to present that report, it should prove to be the sense of the Convention to make these radical changes proposed in this resolution, or to make any material changes, then gentlemen will perceive that we shall be under the necessity of expending, either in Committee of the Whole or in Convention, a great amount of time and labor. Gentlemen know how inefficient and unsatisfactory, often-times, are amendments which are proposed in a large body like this, upon the spur of the moment, when a subject is under consideration. Delay is necessarily involved in correcting the phraseology of such amendments, so as to meet the particular points desired. And especially in this judicial feature of the Constitution, must the language be framed with great care. The whole frame-work of our judicial system must be so adjusted, and the various parts of it must be so harmoniously dovetailed together, that there can be no misconception as to the powers of the different courts and judges, as to their jurisdiction, the right of appeal, etc. Obviously, this work cannot be so efficiently performed either in the Committee of the Whole or in the Convention, as it can be by the Judiciary Committee, provided that committee is so authorized. Then, when the report of that committee shall be presented, it will be in as perfect a state as the committee can get it, and it will be before the Convention, subject of course to such alterations or amendments as any member may see fit to propose for the action of the Convention itself. But these proposed changes are so radical and extensive in their character, pervading many sections, that if they are to be adopted at all, the whole article will necessarily require to be remodelled—almost every section. It certainly will be a great saving of time and labor; therefore, if the Convention will take such action now, as may be regarded in the light of instructions to the committee, and it was with that object that I presented this resolution.

I regret that circumstances have been such as to prevent its introduction at an earlier period, for I can appreciate the importance of the question, and how difficult it is, with scarcely any opportunity for consideration or conversation among members, to pass upon a matter of so much moment. But the thought only occurred to me after the last adjournment of the Committee on the Judiciary, when, I have had an opportunity of conferring with but two or three members of that committee. It seemed to meet their concurrence, and hence arose the idea that we should get the instructions of the Convention on the subject, and also the views of other members, whose opinions I, for one, value most highly, and am very desirous of hearing expressed. I think that before another meeting of the Judiciary Committee is held, whether it be at the present time, or deferred to some future hour of the day, we should have an expression of the sense of the Convention on the subject. I do not want to press this matter with undue haste; but, at the same time, I think I am but expressing the sentiments of many of the members of the Judiciary Committee, when I say that it is important that action should be taken before the next meeting of that committee.

As to the question of the number of courts or judges in Storey County, three districts may be necessary in that county, but that is a matter which I feel disposed to leave to the judgment of those who are the immediate representatives of that county. I believe there has been already an amendment offered providing for three judges in Storey County, instead of two, and I would suggest, with a view of carrying out that proposition, considering the amount of business in that county, it may be necessary to create another court, and to retain there a County Court with probate jurisdiction. That might perhaps meet the difficulty, better than the plan of having three District Judges, and for this reason—that I cannot perceive how it is possible to make in the County of Storey a territorial subdivision in such a manner as to divide, with any degree of accuracy, the business of the three different courts. Yesterday, and until last evening, it was my individual opinion that those two courts proposed to be established in Storey County, could have concurrent jurisdiction; but I have given the matter some further thought, and I am conscious of cases where, if it would not be absolutely impossible, it would, at least, be productive of very injurious results. A division of the county might possibly be made so as to embrace two distinct districts, but I cannot see how it could be divided, with reference to mining claims, into three districts, at the same time conferring on those courts concurrent jurisdiction. In a case where the plaintiff and the defendant reside in two different districts, there would necessarily arise a strife as to where the jurisdiction should be. The same difficulty would be encountered in regard to judgments. There might be a judgment in favor of one party in one court and another in favor of the adverse party in the other court. In questions of injunctions, too, cases might occur where the plaintiff would be a resident in one district and under the jurisdiction of the court of that district, and the defendant in the other district, subject to the jurisdiction of the other court, and each might make an application for a restraining order in his particular district, and each court grant it. Here there would be a conflict of jurisdiction, which no legislation could possibly cure. To obviate that difficulty, I submit that whether there be one, two, or three districts, they should be subdivided in reference to territory. I therefore propose, or rather, would suggest, that the boundary line between Gold Hill and Virginia would constitute a proper dividing line for two districts, one court exercising its jurisdiction on the northerly or Virginia side of that line, and the other in the southern or Gold Hill portion—the jurisdiction of each extending to the boundary lines of the county eastward and westward. In that way, I think the difficulty might be obviated, although members representing that county are, undoubtedly, better advised than I am, and I only throw out the suggestion for their consideration. It seems to me that such an arrangement would very nearly equalize the business of the two courts, while if you create this third court, I do not see how you can make any subdivision by which you will obtain a just equalization of the business at all. Then by continuing this County Court—or, if you please, let it be called the Probate Court, for the name is not material—with the same jurisdiction as is contemplated under the old Constitution, you can dispense with the necessity for a third District Court, and can, at the same time, secure the same advantages. But these, as I before remarked, are all matters more properly for the consideration of the Storey County representatives.

As to the matter of action being had upon this resolution, or something of like import for the guidance and instruction of the Committee on the Judiciary, I believe it is eminently proper that such action should be had.

Mr. COLLINS. I feel inclined to agree with the gentleman from Humboldt, (Mr. Banks), that we should not dispose of this matter without due consideration. I confess I would like to hear some objections presented against this radical innovation upon our judicial system. I have given the proposition considerable attention since it was presented to me last night by the gentleman from Ormsby, (Mr. Johnson), and I must say, that it struck me then, and strikes me now, the more I think of it, as a very brilliant thought, and one which if reduced to practice will be likely to place us all under great obligations to its author. If there is any one thing more than another that tends to produce discouragement in our community, it is

the difficulty and expense attending our litigation. In all small matters, even if a man is the gainer in litigation, he is a loser in the end. I have heretofore been considerably embarrassed in my own mind, in endeavoring to discover some mode by which we could do justice to the outside counties, in establishing a judicial system to meet their wants, as well as the wants of the more populous counties. The capital of Douglas is some eighty miles from the county seat of Esmeralda County; and how difficult it is for citizens of that county to attend the District Court, whether to make an answer in a suit, or to attend the sittings of the court in bench or at chambers. And just so it is with every county which is extensive in territory and sparse in population. It occurs to me, inasmuch as every county must have a County Judge, that we might as well give something more of dignity to that officer, and enlarge his jurisdiction. That would have a tendency to bring a more efficient, learned and intelligent officer upon the bench, and a judge would certainly be none the less qualified to discharge the lesser duties of a County Judge because he was amply qualified to discharge the duties of the higher jurisdiction. It seems to me that such a system would be efficient, and that by this means we would enable the litigants to have their cases adjudicated more promptly, and with very considerably less expense. The Courts could then be in session, if necessary, the greater portion of the entire year, and that is an important consideration, for the delay of justice, under our present system, is practically a bar to justice, and anything that will conspire to hasten litigation, to bring about some determination, whatever the result to the litigants may be, is practically an improvement on the slow and tardy movements of our present system.

I do hope, if gentlemen in the Convention see any practical objections to this system, they will present them now. I am far from being desirous of making a radical leap into anything like sweeping changes, especially in so important a matter as the judicial system; but this proposition does seem to me to be plain, clear and practical, and so far as it is a change, it is all for the benefit of the respective counties. Then again it is a cheap system. As every county must have its judge, at all events, by the additional expense of one, two, or three thousand dollars a year, in the way of increased salary, you place within the reach of each county all the facilities and appliances necessary for the prompt and speedy adjudication of all the litigation which may arise. That will save this State very many thousands of dollars, if not millions.

I do believe that if this resolution is adopted, and the system it contemplates presented to the electors of this Territory, it will have a very material influence in securing the adoption of the Constitution which we are framing, by the people of this Territory.

Now, so far as Storey County is concerned, I would be very unwilling to see a system adopted or attempted to be put in practice in that county, which should provide for three judicial districts, or for confining the litigation entirely to the District Courts. There is a vast amount of minor litigation in the county which should be confined to a court of inferior jurisdiction. If you invest the County Court, or Probate Court—it matters not what you call it—with jurisdiction in all cases amounting to five hundred dollars, together with all cases that may come before it in regard to mechanics' liens, and in regard to forcible entry and unlawful detainer, giving it also, all the criminal jurisdiction, with the exception of homicide, I am of the opinion that that court will have all it can possibly do. Then—if you establish two District Courts, though the question of jurisdiction may be attended with some difficulties, yet these difficulties could be obviated to a great extent. I think that Storey County will be able to clear up its docket, and place its property in a condition free from the embarrassment of the never-ending litigation by which it is now nearly all tied up. That will give Storey County a great advance in the value of its property, and in its improvement and development. For these reasons, I trust that the instruction will prevail, and that the resolution will be adopted now, unless gentlemen of the Convention have strong objections, and are willing to present them. For one, I will listen attentively to any objections. If there be any, I certainly want to know them, and if they prove to be good and valid objections I shall vote against the adoption of the resolution. On the other hand, unless objections are presented, I shall vote most heartily for the resolution.

Mr. DeLONG. Certainly this is a very novel proposition; at all events, it is one that has never before presented itself to my mind. I have been listening with a great deal of attention to all that has been said on the subject, conning over in my mind as rapidly as I could the probable working of this scheme, if carried into effect, and trying to determine for myself whether or not it would have an injurious effect. I suppose I am mentally constituted like other men, and I approach the consideration of this change, which the gentleman from Ormsby has properly called a radical change, with some degree of prejudice, or, at all events, of hesitation. Since it has been my privilege to be a member of the bar, I have always practised in a country where a system prevailed somewhat similar to our present system—a system of Probate and County Judges, District Judges and Supreme Court Judges—and it is a little singular, perhaps, that I should never have thought of the system proposed by this resolution. I have thought very frequently, however, of the miserable working of the old system, in many respects, and since the discussion has been going on here to-day, I have been

...ously trying to discover some reason why ... system should not work well, because it ... to me that there must be some rea... inasmuch as a different system has so long ... prated upon elsewhere. But after that ... reflection, I declare that I cannot yet ... any objection to the system proposed. It ... to my mind clear and reasonable. It ... to obviate a great amount of expense, by ... a permanent court, instead of having a ... court, going about like a band of ... or Thespians—a system which I ... always regarded with disfavor. If you ... District Court in each of the counties, ... cannot sneak off, in a sly way, and get ... an injunction somewhere else, stopping the ... upon a whole mine, when it would require ... months for the opposite party to have ... injunction dissolved, because it is impossible to get the District Judge to hear the case, ... the County or Probate Judge cannot hear ... reverse the decision granting such in... The facility for obtaining injunc... in that way, is a great anomaly in our ..., which, with other evils, I would like to ... abolished.

I am frank to admit that though the system ... proposed is to me entirely novel, yet I ... find, in my own mind, a single valid ob... to it—not one. I think, however, in ... to save the Supreme Court from consid... an almost endless amount of trifling mat..., we shall have to enlarge the jurisdiction ... justices of the peace, and, probably, we ... give the right of appeal from the Ju...'s Court to the District Court, and make it ... there, without the power to go to the Su... Court; otherwise, as gentlemen are ..., and every member of the bar certainly ..., every trivial case will go into the Su... Court. In nine cases out of ten, men ... go into litigation, even for an amount not ...ceeding fifty dollars, would carry it to the ...preme Court of the United States before ... would stop, if they could get it there. ... If you limit the right of appeal in all ... cases to the District Courts, then you ... have but one appeal, and the Supreme ... will properly take cognizance of all ... involving large amounts. I think if this ...osition is adopted, I would be in favor of ...ing jurisdiction to justices of the peace in ... amounting to five hundred dollars, then ...ving an appeal to the District Court—not ... be tried de novo there, but to be tried upon ...ements on appeal—and let the decision ... be final, as the judgment of the court of ... resort finally determines the appeals from ... District Courts. In that way, we insure a ...dy end to litigation. I am not in favor of ...ving more than one appeal in any case, for I ... always been of the opinion that when a ... is twice beaten, he ought to throw up his ... and acknowledge that he has got the ... of the two.

I do not know that I assent entirely, however, to the idea of instructing the Judiciary Committee in this matter. I think it will have just as happy an effect to allow the resolution to go to the Judiciary Committee without instructions, as with them, because, from what I have seen of that committee, I have found it to be composed of men of good practical judgment, and with no foolish pride of opinion, but on the contrary, ready at once to consider any suggestion which commends itself *prima facie* to their judgment. I think they are all favorably inclined to this proposition now, and unless some new view shall present itself to the minds of one or more of its members, when they meet, I am satisfied that they will as readily agree to adopt this system without instructions, as they would with them. If you instruct them, then when they go into committee their hands are tied, and they cannot help themselves, whatever objections may be urged. That, I think, would operate badly, and at all events, it could be productive of no good.

Although it is hardly pertinent in this connection, yet in reply to the remarks of the gentleman from Ormsby (Mr. Johnson) in relation to my own County of Storey, I would state, as one of the delegates from that county, that I would be unwilling to favor any proposition to divide the county into districts. I think it would be productive of a great deal of trouble and annoyance, both to litigants and to practitioners in such districts; and the trouble which the gentleman thinks is likely to result from giving the judges concurrent jurisdiction, it appears to me would be found not to exist. A suit must be conducted in the court in which it is begun, and the plaintiff, of course, always commences the suit. He can only commence it in some one court having competent jurisdiction, and the defendant then cannot rush off and commence suit against him in another court, because the fact that a suit involving the same subject matter was pending in one court would be a bar to a suit in another court. If B owes A, A only can sue, and if B owns property and A sues him for it, it is hardly a probable case that A is going to attempt to bring his suit in two courts at the same time. Another thing: in New York, as I understand—although I do not know the fact, having grown up almost entirely upon this coast—they have Supreme Courts in certain districts having concurrent jurisdiction. In the city of New York, for instance, they have a Supreme Court with several Judges, (the court of final resort being known as the Court of Appeals,) and there they have found no trouble whatever in relation to jurisdiction. The rule there is this, that the first suit abates the second; and undoubtedly we might have the same rule here. If A, B, and C own property which D unlawfully took, A commences suit in the first district, B in the second, and C in the third, but B and C would have to await the determination of the first suit brought by A for the same subject matter, and it would be a good plea in

subsequent suit in the second suit that a previous suit had been commenced for the same subject matter. It would unquestionably have the effect to abate the proceedings, and throw the cost on the plaintiff, and that would soon teach gentlemen better than to commence several suits for the same subject matter. They would not, by that means, injure the defendant at all, but would only assist themselves in costs. Suppose A claims a mining claim, and B enters thereon and commences to exhaust the estate by taking from it the metallic ore. A goes and files his complaint in ejectment, and his bill in equity, ancillary thereto, praying for an injunction. Now, how is it possible for B to turn around and sue A for having wasted the estate, or for trespass, or for being in possession, when he, the plaintiff himself, is in possession, and the only party who had taken out ore?

Mr. JOHNSON. I will explain that point, with the gentleman's permission. I infer that his experience, and certainly my own observation in his county, has demonstrated it clearly. Here is a ledge of which A claims to be in possession, and B also claims possession, having actual possession of another adjoining ledge, perhaps, and upon some hypothesis claiming that the possession of one, gives him, rightfully, possession of the whole. B, being in possession and extracting valuable ore, A institutes a suit and obtains an injunction against B. Whilst that suit is pending, B in turn brings his action against A, setting forth that A is a trespasser, and is extracting valuable ore. Now, in a case of that kind, cannot the parties make their applications in different courts, each having co-extensive jurisdiction, and would not there then be a conflict of jurisdiction?

Mr. DELONG. I see the gentleman's point; but that difficulty cannot arise where there are two District Courts any more readily than where there is only one. Suppose one party holds possession of a claim which another party owns, and each brings suit against the other, would not the same subject matter—

Mr. DUNNE (interrupting.) I rise to a point of order. The jurisdiction of the courts in Storey County is not before the Convention, and this discussion, it seem to me, is taking up too much of our time.

The PRESIDENT, *pro tem.* (Mr. Crosman) overruled the point of order.

Mr. JOHNSON. In the instance which the gentleman states, where application is made to the same District Court, I admit that the difficulty could not arise, and that the decision of one case necessarily or ordinarily would include the merits of the other, and the rights of the parties therein. It is not usually the case, although such instances have occurred wherein both parties have been restrained, and then, when the judge in deciding the one case passes upon the rights of one party, the decision necessarily involves the relative rights of both and the conflicting claims of the adverse parties are decided in the same case. But that is the practical working of a system where there is only one judge instead of two. If there were two judges passing upon the relative rights of the parties, one judge might, in his opinion, take the view that one of the parties had superior rights, and the other, that the other party's rights were superior, and thus a conflict of jurisdiction would inevitably arise.

Mr. DELONG. Nothing is more frequent in the practice of our courts, than where a suit is commenced by one party, for the party sued to bring a cross-suit. For instance, the Uncle Sam Company brings a suit against the Overman, and the Overman turns round and sues the Uncle Sam, for the same property, in the same court, and in the same character of action. The Uncle Sam is in possession of a part of the mine, and claiming the whole, and so is the Overman. Very well, if the Overman does not commence a suit, the Uncle Sam would allow the time fixed by the statute of limitations to expire, and then, when it was settled that the Overman could not obtain possession, it would bring its suit against them. Now, what do they do? The Overman has sued the Uncle Sam, and the Uncle Sam has sued the Overman, in the same kind of action; and there is a provision in our code for the consolidation of actions, and the court immediately directs that both actions be consolidated into one, to save the parties the expense and trouble of two suits.

Mr. JOHNSON. How would you do this if the actions were brought in different Courts?

Mr. DELONG. Why, we would do it with the greatest ease, by your Legislature passing an act, under this Constitution, providing that when more than one suit is commenced and pending between parties in relation to the same cause of action, whether it be in one court or more, on motion of either of the parties, the cause should be consolidated and tried in the court where the first action was brought.

Mr. JOHNSON. Suppose they were both instituted on the same day?

Mr. DELONG. Then it would be a matter within the discretion of the court, which should yield the jurisdiction: that, again, would be a case which you could regulate by legislation. You may say that the party who is plaintiff, if there is difference in the time, shall be entitled to consolidate in the court where the action was first commenced; or, in the other case, you may establish the rule that the court shall exercise its discretion as to the change.

Mr. JOHNSON. Suppose there is a difference of opinion between the two courts as to the exercise of such discretion?

Mr. DELONG. Very well; you can regulate it in this way—that the one suit shall abate the other, or that one shall stand till the other is tried, and then the party may plead the judgment in that suit, in abatement.

Mr. JOHNSON. I hope the Convention will

excuse me for making these interrogatories, because I want to see how these difficulties can be overcome. Now I will ask, suppose the two cases were commenced in two courts at the same instant of time?

Mr. DeLONG. One can hardly imagine a case where two suits would be commenced and tried instantaneously, and judgment obtained in both courts at the same instant. And you would have to imagine, besides, that both the judges refuse to do a plain duty, or to relieve themselves from the performance of a disagreeable duty, by consolidating the actions in the two courts. I can imagine how any law I ever read is liable to be abused to some extent, but I can see how the system the gentleman proposes for Storey County would be subject to gross abuse.

The older portion of the Comstock lead has already been pretty well litigated, and the litigation is now passing almost entirely away from there to the southern portion of the district. I do not see, therefore, how the gentleman's proposition is going to equalize the amount of business in the way of litigation which these two courts would be required to transact, because it is an incontestible fact that the great mass of litigation, or subjects of litigation, now lies south of Gold Hill, where previous to one year ago there was scarcely any litigation at all in relation to mines, almost all of it lying in that portion of the district north of the divide, between Gold Hill and Virginia.

Mr. NOURSE. I would like to know what objection, if any, there is to that system which has been tried for us in New York, where the condition of things in regard to litigation is not unlike that now existing in Virginia City. The litigation is immense before the Supreme Court here. They have one district for the Supreme Court, with four judges, and they have but one clerk. The four judges are at work simultaneously, sometimes several of them trying jury cases, or hearing law cases, and so on, at the same time, in different rooms. Then the one clerk has his deputies attending upon each judge. They divide up the calendar, one judge taking perhaps twenty-five cases, and another twenty-five cases, and arranging the calendar in such a manner that the lawyers may not be compelled to be in attendance in four different places at once. That system is found to work admirably in practice, at least so I am told by those who have practiced under it. It saves the expense of clerks, and saves the necessity of more than one fire-proof safe for keeping the records, which, instead of being scattered about in three or four different rooms, are kept all together. If there is no objection to that system, I would like to see it tried, and it seems to me that it is an admirable one.

Mr. DeLONG. I can see no objection to that system, and I think it would suit me better than the one I proposed myself. We can have one court with three judges, and let them divide the work and discharge their duties coordinately, having but one place for the records, so that there would be no trouble to find the papers, or the records of cases passed upon and determined. I would like that very well, but I would prefer to retain the Probate Judge, and have only two District Judges. However, if that is going to disturb the harmony of the system—for I believe we should have a general system of some kind or other—why, then I do not know but it would be well to take the plan of the gentleman from Washoe (Mr. Nourse) for Storey County, instead of the plan of the gentleman from Ormsby (Mr. Johnson).

Mr. DUNNE. I would suggest to the mover of this resolution, that it is too much to ask the Convention, upon the spur of the moment, to agree upon a judicial system upon which the committee themselves do not agree, as is evidenced by the discussion which has taken place. I make the suggestion that he withdraw that portion of his resolution which requires, or instructs the committee, and let them simply bring the matter before the Convention upon their report. It will be time enough to ask us to agree to the proposed system when it shall be reported from the Committee.

Mr. JOHNSON. As to this matter of a judiciary system for Storey County, gentlemen will recollect that I was disposed from the first to leave it mainly to the Storey County delegation. I only threw out a suggestion for their consideration, as I conceived that that subject was indirectly, if not directly, involved in the resolution. The inquiries which I propounded, were intended only to elicit the views of other gentlemen, for the consideration of the Convention.

I had a two-fold object in the introduction of this resolution. One fact which I desired to express by its introduction was, that as an individual member of the committee, I felt that we were in a measure instructed, by the action already taken by the Convention in adopting as a basis the old Constitution—that this being a change radical in its character, I, for one, was unwilling to assume the responsibility, in the absence of definite instructions from the Convention, of adopting such radical change. The other purpose I had in view, however, which applies individually to other members of the Judiciary Committee as well as to myself—the other, and material object was, to elicit the views and opinions on this important subject, of members from the various counties, because the resolution, before its introduction, had only been submitted to the consideration of a few—four, five, or possibly six, at the most—of the members of this Convention. It seems to have met with favor, however, briefly and hastily as it has been considered, and if the Convention do not feel authorized to instruct the committee on so material a matter, upon the short notice which has been given, yet, at least, we shall have obtained the views of members of the Convention, so that the committee may feel authorized

to take some action on the subject, which the Convention may hereafter approve.

As to the jurisdiction of justices of the peace, that, it strikes me, is a matter of detail only, and I regard it as being of comparatively little consequence whether that jurisdiction shall be limited to two hundred, three hundred, or five hundred dollars. The exact limit of such jurisdiction, I suppose, may be adjusted hereafter. In regard to the appellate power, the one idea I have in view is, that the Supreme Court shall be the appellate court from the District Courts, and that the District Courts shall be the appellate courts from the Justices' Courts, so as to allow but one appeal in any given case.

The other matters which have been discussed in this connection are mostly, if not altogether, matters of detail. I do not care what disposition may be made of the resolution by the Convention, when the main purpose for which it was introduced shall have been observed; that is to say, the eliciting of the opinions of members. I will then, if it is generally desired, withdraw it. If the members of the Committee on the Judiciary do not feel themselves imperatively bound by the instructions heretofore given by the Convention—if they feel authorized to make the change, as proposed by this resolution without express authority previously given by the Convention—I am perfectly willing to withdraw the resolution, but will not do so at this time, if other gentlemen wish to speak upon it.

Mr. COLLINS. I do not agree with the gentleman from Humboldt, (Mr. Dunne,) that this discussion is a waste of time. I think this is the most important business to come before the Convention, and from the colloquial conversation which has occurred between our President and the gentleman from Storey, (Mr. DeLong,) I have, for one, derived a great deal of benefit. It is by virtue of these questions and cross-questions, that we are enabled to arrive at definite conclusions.

Now, sir, in regard to Storey County; I have been of the opinion that that county ought to have two District Courts, because I thought that to have one court only in the county, with two or more judges having concurrent jurisdiction, would lead to a great deal of embarrassment. And I would ask my colleague (Mr. DeLong) whether, if we have one District Court with more than one judge, it will be in the power of litigants to elect which judge they will bring their suits before?

Mr. DeLONG. No, sir; not if you follow the plan proposed by the gentleman from Washoe (Mr. Nourse). When you go into court and commence an action, you file your complaint, and a demurrer or answer is filed, and issue is joined. Then the case is placed on the calendar, whether it be a case at law, in equity, or on appeal; and when that calendar is made up, that is, when the court term commences, our practice would be, under the system proposed, for the judges to select from the calendar so many cases to be tried by each, taking alternate cases, for instance. It would be regulated altogether by a rule which would be established by the court itself, each judge taking twenty-five or fifty cases, selected alternately from the calendar, and in that way it would be impossible for litigants to know in advance before which of the judges their case would be tried, nor could there be any picking of cases by the judges.

Mr. COLLINS. Would that apply to do the present calendar?

Mr. DeLONG. Oh, yes, sir.

Mr. COLLINS. I believe San Francisco has three judges, and also three distinct districts; and as the lawyers in California generally have great admiration for the New York practice, I do not see, unless they thought unfavorably of it, why they did not adopt this system in San Francisco.

Mr. DeLONG. It was a very feasible plan for the city of San Francisco to divide that city into districts, for the reason that no more litigation was likely to arise in one district than in another. But that is not the case in Storey County. If you divide that county, the probability is that the large mass of business will fall almost entirely in one court, to the exclusion, almost, of the others; and the same trouble will exist in regard to getting cases tried as exists there now. For instance: Had we divided Storey County a year ago into two districts, drawing the line between Gold Hill and Virginia, what would have been the result? There would have been nine new cases located south of that line to one north of it, and the consequence would be that the Southern District Judge would be unable to try the cases before him, and the calendar would be blocked up in the same manner in which it is now. But under the system proposed by the gentleman from Washoe, I do not see that any difficulty in the world can arise. We might have half a dozen judges, and yet all would be harmonious.

But one of two things I must insist upon, and I give notice that I shall insist upon them, namely: that we shall have a Probate Judge who shall have jurisdiction in cases of minor importance, and in criminal cases, such as felonies, and the like—all except homicide—or else we must enlarge the jurisdiction of Justices of the Peace. Otherwise we shall have in our higher courts an immense amount of business which is altogether unworthy the attention of a court of respectable character, and which will block up the business of the courts, to the exclusion of important matters, at all times.

Mr. JOHNSON. You can do both. You can have Probate or County Judge, and enlarge the jurisdiction of Justices of the Peace also.

Mr. BROSNAN. The objection of my colleague relates to what I presume can be easily remedied, as it is a matter of detail only. I wish to say only that, in my opinion, no trouble

...ude from giving concurrent jurisdiction ...ree or three judges in Storey County. In ...n Francisco, at the present time, there are not ...ree judges for the city proper, because the ...unty of Contra Costa is attached to one of the ...dicial districts, and San Mateo County is at...ched to another. To show how well this ar...angement might be made to work in practice, I ...ll state that in the first organization of the city of San Francisco, there was a City Court, having ...ree judges, each having jurisdiction over the ...hole city. They had but one clerk, and one ...om for the records of that court, and when ...e calendar, as my colleague (Mr. DeLong) ...s here exemplified, was made up on the issues ...amed for trial, there was distributed to each ...f the judges a portion of that calendar—to ...is a portion, to that a portion; and to the ...ird the remaining portion—and then they ...ent into separate apartments and tried their ...ases. They encountered no difficulty under ...is arrangement, as I am a witness.

The question was stated on the amendment ...fered by Mr. Brosnan to strike out "two" ...d insert "three."

Mr. BROSNAN. I withdraw that amend...ent.

Mr. NOURSE. Such a thing as a County ...ourt is not known in New England, I believe. ...y native State of Maine I know has none, nor ...as Massachusetts, nor Minnesota; they may ...ave in Illinois, but I think not, nor has Penn...lvania, I think. At all events, in a large ...roportion of the States of the Union there is ...o such thing known as a County Court. They ...ave Probate Courts, but no such thing as a ...ounty Court. Consequently this proposition ...s not an innovation; it is simply going back ...o an earlier system, which has been departed ...rom in many cases, because here we see no ...ecessity for departing from it.

In regard to this matter of a single district ...aving three judges, it seems to me to be as ...imple a plan as can well be provided for ...torey County. There is certainly no practical ...ifficulty to be apprehended about it. As the ...entleman from Storey (Mr. DeLong) has ...aid, the calendar is made up and divided ...mong the judges, and they have special terms. ...erhaps they will devote Mondays to hearing ...nd disposing of motions and demurrers, and so ...n, dividing up the business through the week. ...hen a motion or demurrer cannot be brought ...efore any certain judge which the moving ...arty wishes, but he makes the motion to be ...eard before the court at a special term; the ...alendar for the special term is made up, and ...t is decided by the judges themselves, among ...emselves, who shall hold the special term. ...ll these matters of detail are arranged by ...e rules made by the judges themselves, and ...ey themselves make the selection of the ...dges, from time to time, who are to attend to ...is or that particular part of the business. ...ey will fix and establish those rules, as occa...ion requires, among themselves. In respect to the number, I should suppose that three judges would be needed for Storey County.

Mr. WARWICK. I think I can make a motion which will quiet this whole matter, since we have exhausted a great deal of time upon it without making any progress. As we have none but lawyers on the Judiciary Committee, and as it will be much easier to settle the matter there, I move that the whole subject be referred to the Committee on the Judiciary.

Mr. FITCH. I would like to know if the gentleman means to be understood that none but lawyers have participated in the discussion?

Mr. FRIZELL. The object sought for here, I understand, is the accommodation of the people in their local affairs, so far as the judiciary is concerned. Now I am from the southern portion of Storey County, a county which, although not large, it is true, nevertheless contains a large number of people; and as a delegate from Gold Hill, I have reasons to urge which I think are not only plausible, but just, why Storey County should be districted. With all due deference to the practicing attorneys of our delegation, I think, on the part of the people of Gold Hill, which is an incorporated city, and in view of the just rights of those people, as citizens of that portion of the county, that I have good reasons to urge before the Convention why that county should be districted. And in case it should turn out, in the wisdom of the Convention, that in shaping and putting in operation this machinery, it is found to be impracticable to district the county, then, in case we should have two District Judges in the county, I hold that one court-room should be established at Gold Hill. Now the primary object of this amendment is, as I before remarked, to accommodate the people. You are well aware, Mr. President, that cities are districted and divided into wards for that one purpose of accommodating the people. Now, I say, and every gentleman from Storey County knows it, and many gentlemen from Ormsby County know it also, that Storey County can be districted perfectly; that the land-marks are perfect there. There are two corporate cities in that county, and there are two official maps of those cities. The land has been surveyed from the western boundary next to Washoe, to the southern boundary adjoining the county of Lyon, and the lines as surveyed have been marked, and can be plainly fixed. There can therefore be no inconvenience on account of any uncertainty of jurisdiction. Juries can be drawn from the body of the county, as it is right they should be; and I say this, that Gold Hill, which is the oldest mining camp in the Territory of Nevada, and the mining district having within it the dormant wealth of an empire, should not be overlooked. That city has assisted and worked side by side with her sister city of Virginia—they are twin sisters. Now

I firmly believe that if the plan of districting can be consulted and agreed upon, it will accommodate the people of Gold Hill better than any other arrangement. Although some of the delegation from Storey County may not be willing to accept it, yet it is only fair and just, and I ask nothing more than that.

One word as to the argument of my colleague from Storey (Mr. DeLong) that the greater amount of the litigation arises in the southern portion of the county. That is the argument which he urges as a reason why the county should not be districted, and why all the judges should sit in Virginia. Now I ask if, on the contrary, that is not a strong reason, if you wish to accommodate the people, why one district, or one court, at least, should be established at Gold Hill? According to the gentleman's own showing, if you establish courts altogether in Virginia, the litigants will have to go from Gold Hill to Virginia, or even from American Flat, or the intervening country between Gold Hill and American Flat, and the expense would be the same as if they had to come to Carson City. A man has to be away from home in order to attend the courts. He cannot be with his family, any how, and the distance he may be from them is not material.

The PRESIDENT *pro tem.* [interrupting]. This is a matter not strictly before the Convention, although under the resolution discussion has been allowed to take a wide range.

Mr. CHAPIN. I cannot feel, with some of the gentlemen who have spoken, that this long discussion has been a waste of time. It is a subject of vast importance to us, and this, it seems to me, is the proper time to have a full and free discussion upon it, and to bring out all the points. I have been very deeply interested in the discussion which has thus far been had, and I am more fully satisfied than I was when the resolution was first presented, that it was dictated by wisdom, and that we ought to, and I trust will adopt it, with great unanimity.

Now, a few words, before I take my seat, in reference to dividing that little county of Storey. I did not expect that any such thing would be proposed. We are already groaning there under a taxation that is enormous, and we have the figures coming before us in the papers of this morning, showing a debt or expenditure to the amount of $466,129 for that county of Storey. The proposition is now being made, to consolidate the city and county, in order that we may reduce our expenses, and save ourselves from such enormous taxation. Now, my friend, the gentleman from Gold Hill (Mr. Prizell) favors a proposition to make a division, which will add still further to that taxation, and to those expenses. That would be the result.

Mr. PRIZELL. I ask the gentleman to show it.

Mr. CHAPIN. Why, if you make a provision for a District Court and a County Court, you must have two court-houses, separate and distinct from each other, and a whole batch of clerks, to prepare and conduct the business in each.

Mr. PRIZELL. Cannot you hold two courts with one clerk and a deputy?

Mr. CHAPIN. But you can have one court without employing a deputy, and if you have two courts, you must have two offices that will be accessible for the business of those courts. Let us condense it all into one court, and have but one clerk; and let us economize, especially if we are going to have a State Government, which will certainly increase our taxation. If the government of our new State is going to cost so much more than the territorial government, do not let us add to our expenses in matters of minutia, where it is not necessary.

Mr. DeLONG. I merely want to suggest that down in Gold Hill they could, perhaps, find an excellent place in which to hold a court for the accommodation of my colleague, by taking one of the quartz mills—and I believe there is little or nothing but quartz mills there. But, seriously, I would ask if my colleague (Mr. Prizell) thinks it would be very convenient to run the attorneys and litigants backwards and forwards between Virginia and Gold Hill. They would have to do some tall running, most certainly. A man would want to know what was up in the court in Gold Hill, and when he got there, very often he would have to travel back to Virginia, as fast as he came. It would be a good thing to give custom to the livery-stable keepers. Now, Gold Hill is a nice place, and always has been, and I have always admired it. I have a particular admiration for her representatives. [Merriment]. I do not blame them at all for proposing this division; but I think the Convention would be mistaken if it should adopt their views, and so give rise to perpetual racing matches between attorneys. I am willing to run a little race with my colleague, if he wishes, but I do not like too much of that exercise, that is all.

Mr. PRIZELL. Now, sir, I have been a resident of Gold Hill for four years and a half, and I feel authorized to speak for her interests. There is a flag in our possession in the town of Gold Hill, which speaks volumes for her patriotism and liberality. She has contributed, for each of her inhabitants, something like eleven dollars and a half to the Sanitary Fund. For I pledge myself that, if a court is established there, so far as the court-room is concerned, it shall not cost the State of Nevada, nor Storey County, either, so much as one cent.

The PRESIDENT *pro tem.* The discussion of this matter, the Chair will suggest, had better take place when the report of the committee comes up for consideration.

Mr. PRIZELL. I was merely answering the argument of my colleague. I will say to my other friend and colleague, (Mr. Chapin,) that the argument against having a court at Gold Hill,

reminds me of a certain anecdote of Dr. Johnson. This resolution, you will remember, started out with the idea of accommodating the people, as regards the judiciary, and their assistance on the courts. Now it is related that Dr. Johnson frequently visited at a house where a certain young lady was constantly preaching up democratic principles, social equality, and the idea of bringing all people up to a certain level, or all down to a certain level. The Doctor did not fully believe in her sincerity, and so, in order to test her, he one day proposed to bring in the footman to dine with them. "Madam," said he, "we will all dine together, and so be on a level." But the lady was terribly indignant that he should bring in a menial and propose to seat him at her dinner table. "Madam," said the Doctor, "that is just what I expected. You levellers are willing to bring those who are above you, down, but you are not willing to elevate those who are below you." In the same way my colleague professes to be willing to accommodate the people, but he has shown no willingness to bring himself down to the level of our own. He is willing to accommodate the people to a certain extent, and until it reaches his own case, and then he is not willing to level any further.

Mr. DeLONG. I would like to ask the gentleman how he can expect people in Virginia to bring Gold Hill up to their level? [Laughter.]

Mr. CHAPIN. I desire to make but one remark further in regard to this division of the county proposed by the gentleman from Gold Hill. Such a division would be like dividing a family, and there is no propriety in it. Those two places are bound together, and built up together, so that you cannot tell where one ends and the other begins. Why, sir, only a little while ago it was reported that a stranger on his journey came to Gold Hill and inquired the way to Virginia.

Mr. DeLONG. He was lost.

Mr. CHAPIN. They told him to keep right on up the road, and it is said he did keep on, right through Virginia, and away beyond, to the summit north of Virginia. When he got there, he met a resident, and inquired how much further it was to Virginia, and the man replied: "Why, sir, you are going the wrong way!"

Mr. DeLONG. He was a Muggins. [Laughter.]

Mr. CHAPIN. No doubt of it, because he came from Gold Hill. He said he had just come from there, and it was all one place all the way. And so it is. A stranger would regard it all as one town, and if he did not know the fact of the town, would pass right on through Virginia, supposing that he was still in Gold Hill. Now, the gentleman should not undertake to divorce those twin portions of that county. We have had enough of divorces there already, and we want none of that kind. Now, I move that this whole matter be referred back to the Committee on the Judiciary, with instructions to prepare their report, and present it to this Convention.

Mr. BANES. I do not like to have the resolution referred in its present form, for it seems to be in an improper shape for reference. To refer a resolution to a committee which that resolution instructs, seems to me absurd. I would prefer to have it amended so as to begin—"Resolved, that it is the sense of this Convention"—and so on, and then we can properly refer it.

Mr. JOHNSON. I will change the phraseology so as to read that the committee be instructed to report upon the expediency of making this change.

Mr. STURTEVANT. What objection is there to referring it to the Storey County delegation, and letting them arrange it to suit themselves?

Mr. JOHNSON. I will modify the resolution, so as to read as follows:—

Resolved, That the Committee on the Judiciary are instructed to consider the expediency of embodying such proceedings in the judicial features of the Constitution as will provide for the election of a District Judge in each organized county of the State, (except Storey County, wherein there shall be two District Judges), with such additional jurisdiction as is now conferred upon County Probate Courts, so as to dispense with such County or Probate Courts.

[The PRESIDENT in the Chair.]

The question was taken on the adoption of the resolution as modified, and it was adopted.

ORDER OF BUSINESS.

Mr. DUNNE. I move that the rules be suspended, so that we may pass over the intervening order of business and go into Committee of the Whole on the article in relation to Taxation.

Mr. CHAPIN. I would prefer to take up the regular order of business, and finish that up. I am opposed to changing the order of business.

The PRESIDENT. I would suggest that we have but a short time remaining in which to transact any business in Committee of the Whole.

Mr. DUNNE. That is the reason I made the motion—to get into Committee of the Whole as soon as possible. We have an hour left yet.

Mr. DeLONG. We do not save anything by skipping one portion of our business in order to take up another portion.

The question was taken on the motion of Mr. Dunne, and it was not agreed to.

RIGHT OF SUFFRAGE.

Article II, entitled Right of Suffrage, was taken up in its order on the general file for a third reading.

THE OATH FOR VOTERS.

Section 2, as passed to engrossment, was read, as follows:—

SEC. 2. No person who has been or may be convicted of treason or felony in any State or Territory of the United States, unless restored to civil rights,

resident person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the General Government, and no idiot or insane person, or any person who refuses to take the following oath or affirmation, to wit: "I, ——, do solemnly swear or affirm that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any State, Convention, or Legislature, to the contrary, notwithstanding; and, further, that I do this with a full determination, pledge and purpose, without any mental reservation or evasion whatsoever: so HELP ME GOD"—shall be admitted to the privilege of an elector.

Mr. COLLINS. I suggest that that clause which relates to requiring the oath to be taken, should be made to read so that no person who refuses, "on being challenged," to take the oath, shall be allowed to vote.

Mr. DeLONG. Out of abundant caution, because it is urged by some that it is incumbent on every voter, as it now reads, to take that oath, if my colleague will move the amendment, I will second it.

Mr. FRIZELL. I see no necessity for that. It is evidently the meaning of the language, as it stands, that a man is only to be required to take the oath when some obstacle is placed in the way of his voting. If you take the entire language as it is, I think that will be the understanding.

Mr. COLLINS. I think, as it now stands, it would be within the power of any man who wishes to defeat an election to so embarrass the polls as to prevent more than one-third of the votes from being received. I move to amend the section by inserting after the word "who," the words, "when challenged;" so as to read, "who, when challenged, refuses to take the following oath," etc.

Mr. DeLONG. I second the amendment. I will say to my colleague, (Mr. Frisell), that although the language seems so clear, yet I heard a lawyer in this city the other day insist upon it that this section required every man to take the oath. Now, although I do not say that that construction is correct or logical, yet in order to remove every quibble or doubt, I would like to see this amendment made. It can do no harm, and it certainly may avoid confusion.

The PRESIDENT. If there is any objection it will require a motion to reconsider the article.

Mr. FRIZELL. I withdraw my objection.

[Mr. COLLINS in the Chair.]

Mr. JOHNSON. There is another matter I would like to suggest, in this connection, which has occurred to me since the Convention last took action upon this section. I recognize the fact that an amendment in this particular, or embodying substantially the same language as that now proposed, is necessary; but there is another difficulty, it seems to me, which is not met by this amendment. Suppose a precinct where there are five or six hundred voters—and there are several such, I believe, in Storey County, and some containing more than that number—and suppose an individual places himself in a position to challenge every voter. Now, in the judgment of the Convention, where the voters are so very numerous, would it be possible, within the hours of election, for that oath to be administered to every one, so as to enable all to deposit their votes? It will be observed that this oath is of considerable length.

Mr. FITCH. I will suggest, that in Storey County, anybody who tried that on would find it mighty rough for him about ten o'clock in the morning.

Mr. JOHNSON. We are providing now for a law; not a mob law, but, on the contrary, a law of such a character as, I hope, will prevent any such evil practice.

Mr. FITCH. I do not say that I would advocate it; I only state what would probably be the result.

Mr. JOHNSON. I suggest the inquiry, whether difficulties are not likely to arise by the operation of this section, if left as it is, or even with the amendment which has been offered. I would prefer that the Convention should take further action upon the subject. Let us dispense with the third reading of the bill at this time, and consider the matter a little; and let us make any corrections that may be necessary, when we shall have had time to prepare any amendments needed to obviate this difficulty.

Mr. HAWLEY. Allow me to suggest that it is contemplated in another portion of the article to provide for a registry law, and it has been my view, from the first, that when the voters are registered, then and there, this oath should be administered. That would do away with all this objection.

Mr. CHAPIN. I hope this amendment will be made, because that will improve the section to some extent. Then I shall propose to make a further amendment by striking out that oath altogether. I can see objections to it which, in my judgment, are most serious. Any person in the city of Virginia, in some of those wards where they cast from twelve to fifteen hundred votes at an election, when he finds his faction in a minority, might get together a number of men who are "on the shoulder," and get them to take up their positions around the polls, and require every man who comes up to vote to take that oath; and then look at the amount of time that would be consumed. Such a faction may see to it that every vote on their side is cast in the morning, and in the afternoon, when the laboring men, the "hoisting miners," come in to cast their votes, every one may be required to take that oath, so that not one-fourth of them can have the privilege of voting for want of time to get through with all this long form of oath. I ask that gentlemen give to it here, that, while every possible safeguard

is thrown around the ballot-box, we do not guard it so strictly as to prevent honest voters from exercising their rights. We have a registry law provided for now, which will be in itself almost a perfect safeguard, and now let us strike that oath out, and leave it to the Legislature to make such provision in relation to the registry of voters as may be necessary. Let them provide, if they please, that such an oath shall be taken at the time of registration, and then we shall be safe.

(The President in the Chair.)

Mr. TOZER. When this Article was under consideration in the Committee of the Whole, I proposed an amendment to this section, which, however, was voted down by a large majority. And I do not propose now to offer the same or any similar amendment; but I hope that the amendment already before the Convention will prevail; and I hope that, as suggested by my colleague, (Mr. Chapin), this entire matter of the oath will be stricken out. It seems to me, that if we leave it in it will very much encumber and embarrass the machinery of elections. At any little petty election, under such a provision, this difficulty may arise, and at an election for county officers, where the heat of the contest is great between the different contestants for some of the offices—in populous towns like Virginia and Gold Hill, or other large towns of the State—the election may be so embarrassed by this means as to occupy the whole day in challenging perhaps only two or three hundred voters, although there may be a thousand or twelve hundred men entitled to vote at the same polls. The day would not be sufficiently long to canvass the whole election at that rate. I hope the section will be so amended, at any rate, that persons entitled to it shall not be denied the privilege of an elector. Let us leave the Legislature to settle and arrange these matters of detail. We are seeking to remodel this Constitution in such a way as to render it acceptable to the people of the Territory, and we should bear in mind that one chief objection upon which it was formerly rejected was, that it legislated too much. I think I can see a disposition on the part of this Convention to fall into the same error, by legislating too much in this article, as will as some others before us. We are pursuing the same course that swamped the work of the former Convention, and I trust that we shall adopt some other course, and devise some other way by which this difficulty may be obviated.

Mr. KENNEDY. I believe I was the author of this oath, at least so far as the introduction of it into this section is concerned, and I must say I cannot see the difficulties which other gentlemen have discovered in regard to it. I acknowledge that, theoretically, there may be a difficulty. Suppose you challenge every man who comes up to the polls, then, of course, all could not vote. But that same objection exists at the present time. If any person wishes to challenge any or every voter, he has the right to do so, and can insist that the oath shall be administered to every man who comes to the polls. That is the case under our present territorial laws, and I do not see that the administration of this oath would take much, if any longer, than the one we now have.

Mr. NOURSE. I hope the suggestion of the gentleman from Ormsby now in the chair, (the President,) will be adopted. There are several matters here which seem to need some change, and if any amendment is to be made, it should be done at this stage of our progress. I think that, upon consideration, gentlemen will agree with me that the words "unless an amnesty be granted," should be stricken out, before the section is finally adopted.

Mr. HOVEY. I move to recommit the section to a select committee, with instructions to report on the propriety of striking out the oath.

Mr. CHAPIN. In reply to my friend from Lyon (Mr. Kennedy) who remarked that there is an oath now which could be required to be taken, I would say that that is very true, but that same oath would still be necessary, in addition to this, which makes it so much the worse. The oath now required by law, is a very brief one. The voter must swear that he has been so long a time in the precinct, and a few other matters, and the addition of this long oath to that, makes the matter so much the more objectionable.

Mr. FITCH. I trust the oath will be stricken out, for I do not see that it would be of any particular use. It will devolve upon the Legislature to prescribe the punishment for illegal voting, and the Legislature will designate the manner and means by which convictions for illegal voting can be procured. They can at the same time require and prescribe an oath to be taken, and fix the punishment for swearing falsely. I think it is too much like legislation, to insert a provision of this kind in the Constitution.

Mr. CROSMAN. I am in favor of recommitting the article without instructions. I have an amendment which I wish to propose, and there are several others who have amendments to offer. I will move as an amendment to the pending motion, that the article be recommitted to the Committee of the Whole, without instructions.

Mr. STURTEVANT. I hope, as there are several amendments which gentlemen wish to offer, that if the article can be recommitted for amendments generally, that course will be taken. I do not see why the Convention may not instruct itself in regard to amendments; at any rate, I trust that gentlemen will not spend the time in harping upon the matter.

Mr. DUNNE. I should be opposed, entirely, to the motion to recommit without instructions, and I think the gentleman from Storey (Mr. Chapin) has hit the nail exactly on the head. The oath should be required to be taken, but it

is generally impracticable to administer it at the polls. The place to do that is the registration office, and the Legislature should be authorized to require it to be done at that place at the time of registration, and let the right of a man to vote be settled when his name is registered. The registration should be completed ten days before the election, and then let every person who desires to exercise the right of suffrage, take care that his name is registered in due season. It would be dangerous to empower any citizen who might see fit, to obstruct the polls by challenging every voter, and requiring him to take this oath. I think the propriety of the amendment will suggest itself to every one, and I hope it will be adopted, and then let the article be recommitted for further amendment if necessary.

Mr. HAWLEY. In order to avoid the tedious debate which is likely to ensue, with the consent of the gentleman from Lyon, (Mr. Crowner,) I withdraw my motion to recommit, and will let the question be taken on the motion of the gentleman from Storey (Mr. Collins).

Mr. CHAPIN. I hope we may be allowed to come to a direct vote without recommitting the article. I think it may be done just as well now, and save time.

Mr. BANKS. I dislike to rise to a question of order, but gentlemen all know that we cannot recommit an article without instructions, upon its third reading. The regular Parliamentary course is to go on and consider it. I raise the question of order, that it is not in order to recommit the article without special instructions.

The PRESIDENT. The point of order is well taken.

Mr. CHAPIN. Then I move to recommit the article to the Committee of the Whole, with instructions to strike out the oath and all pertaining thereto.

Mr. WARWICK. If the Convention wishes to retain this oath, I think it can readily be put in such a form as to satisfy all. Let it be made to read, that when the voter is challenged before the Registrar, he shall, if there be any question about his loyalty, take this oath. A man's loyalty can be tested as well before the Registrar as anywhere, and if there be any doubt about it, that is the proper place, and then the best time, to settle the question. Then there will be no necessity for occupying the time at the polls by making challenges. I think, by substituting those words, we can obviate the only difficulty in the way of the adjustment of this question, and I respectfully submit that suggestion to the judgment of the Convention.

Mr. HAWLEY. I think the gentlemen is obviously wrong, in anticipating any office which may or may not be created. We do not know but that section relative to registration will be stricken out. Moreover, there is another objection: the Registrar may be in his office, and if he is not required to demand the oath of every one, without any challenge, then may not be a man to make the challenge within three squares of the office, and so the provision would be entirely nugatory. I would be in favor of making it obligatory on the Registrar to administer the oath to every man who is registered.

Mr. FITCH. Now why not leave the matter to the Legislature? I am afraid we are laying ourselves open to the same criticism as the last Convention—that we are leaving nothing for the Legislature to do but to pass a law declaring whether or not dogs are property. I think we had better leave something to the Legislature, and not attempt to put into this Constitution all the legislation which may be required for the State for the next ten years.

Mr. WARWICK. I did not make any motion, because I understood there was an amendment pending.

The PRESIDENT. The question is on the motion to recommit.

Mr. KENNEDY. I hope the gentleman will offer his amendment in such a form as to make it obligatory on the Registrar to require the oath to be taken by every man, whether he is challenged or not.

Mr. WARWICK. I will move to amend the motion to recommit, so as to recommit the section with instructions to insert between the word "who" and the word "refuses," the words, "when challenged before the Registrar."

Mr. STURTEVANT. I am somewhat of the same opinion as the gentleman from Storey (Mr. Fitch) in regard to our legislating here. If you were to insert the whole proceedings of a camp meeting in this section, I do not see as it would make any particular difference. [Merriment.] These little technicalities ought to be left to be regulated by the Legislature, for it is not to be presumed that we are going to enact an entire election law here. We cannot well do it if we would. I am in hopes that we shall come speedily to a vote on these numerous amendments, and either kill or cure. We can vote them all up, or all down, in about ten minutes, if we will.

The question was taken on the amendment offered by Mr. Warwick, and it was not agreed to.

The question was then taken on the motion of Mr. Chapin to recommit, with instructions to amend by striking out the oath and all relating thereto, and it was agreed to.

DISTRIBUTION OF POWERS.

Article III, entitled "Distribution of Powers," was taken up on its third reading, and read as follows:—

ARTICLE III.

SECTION 1. The powers of the Government of the State of Nevada shall be divided into three separate departments—the Legislative, the Executive, and Judicial—and no person charged with the exercise of pow-

to property belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

The question being on the final passage of the article, the yeas and nays were taken, and the vote resulted—yeas, 31; nays, none, as follows:—

Yeas—Messrs. Banks, Belden, Brady, Brosnan, Chapman, Collins, Crawford, Crosman, DeLong, Dunne, Evans, Folsom, Gibson, Haines, Hovey, Hudson, Kennedy, Kinkead, Lockwood, Mason, McClinton, Murdock, Nourse, Parker, Proctor, Sturtevant, Tagliabue, Tuttle, Warwick, Wetherill, and Mr. President—31.

Nays—None.

So the article was passed.

LEGISLATIVE DEPARTMENT.

Article IV, entitled Legislative Department, was taken up on its third reading, and read as far as, and including, Section 3.

Mr. DUNNE. I move to recommit this article, with instructions to strike out the words in Section 3, "on the Tuesday next after the first Monday in November," and to insert instead the words, "on the first Wednesday in September;" and also to add to the section the words "except as hereinafter provided." I will ask that the Secretary read the section as it will stand if amended.

The SECRETARY read as follows:—

SEC. 3. The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the first Wednesday in September, and their term of office shall be two years from the day next after their election, except as hereinafter provided.

Mr. DUNNE. One reason for offering this amendment is, that in November great numbers of our qualified electors return to the State of California to spend the winter, and on that account, if we have the election in November, it will reduce our apparent vote. It is quite an object for us to show a large vote, for the purpose of securing a large representation in Congress. I think, also, that November is too late in the season. As a general thing, the weather would be much better for campaigning in September. Again, that is the time for the Presidential election, every four years. These things will certainly commend themselves to almost every member here, though Storey County may not be, perhaps, so much in favor of the change, as that is a very small county, as regards its territorial extent, and there is not much difficulty in travelling about in it. I think, however, that there are very potent reasons for making the change in these two respects. At all events, I desire to bring the subject before the Convention.

Mr. DELONG. I am willing to support the amendment if we can have it engrafted right into the article at once; but if we go to recommitting all these sections, we shall never get through in the world.

Mr. DUNNE. I will ask a suspension of the rules, in order to make the amendment now.

The question was taken on the motion to suspend the rules, and, upon a division, it was not agreed to—ayes, 16; nays, 11—not two-thirds having voted in the affirmative.

Mr. DUNNE. Now I renew my motion to recommit the section, with the instructions which have been read.

The question was taken, and on a division the motion was agreed to—ayes, 15; nays, 13.

EXECUTIVE DEPARTMENT.

Article V, entitled Executive Department, was taken up on its third reading and read, as follows:—

ARTICLE V.

EXECUTIVE DEPARTMENT.

SECTION 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be Governor of the State of Nevada.

SEC. 2. The Governor shall be elected by the qualified electors at the time and places of voting for members of the Legislature, and shall hold his office for four years from the time of his installation and until his successor shall be qualified.

SEC. 3. No person shall be eligible to the office of Governor, who is not a qualified elector, and who, at the time of such election, has not attained the age of twenty-five years; and who, except at the first election under this Constitution, shall not have been a citizen resident of this State for two years next preceding the election.

SEC. 4. The returns of every election for Governor, and other State officers voted for at the general election, shall be sealed up and transmitted to the seat of Government, directed to the Secretary of State, and on the third Monday of December succeeding such election, the Chief Justice of the Supreme Court and the Associate Justices shall meet at the office of the Secretary of State, and open and canvass the election returns for Governor and all other State officers, and forthwith declare the result and publish the names of the candidates elected. The persons having the highest number of votes for their respective offices shall be declared elected, but in case any two or more have an equal, and the highest number of votes for the same office, the Legislature shall, by joint vote of both Houses, elect one of said persons to fill said office.

SEC. 5. The Governor shall be commander-in-Chief of the Military forces of this State, except when they shall be called into the service of the United States.

SEC. 6. He shall transact all Executive business with the officers of the Government, civil and military, and may require information, in writing, from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

SEC. 7. He shall see that the laws are faithfully executed.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the next election and qualification of the person entitled to such office.

SEC. 9. The Governor may, on extraordinary occasions, convene the Legislature, by a proclamation, and shall state to both Houses, when organized, the purpose for which they have been convened, and the Legislature shall transact no legislative business except that for which they were especially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in session.

SEC. 10. He shall communicate by message, to the Legislature, at every regular session, the condition of the State, and recommend such measures as he may deem expedient.

SEC. 11. In case of a disagreement between the two Houses, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

Sec. 13. No person shall, while holding any office under the United States Government, hold the office of Governor, except as herein expressly provided.

Sec. 12. The Governor shall have the power to suspend the collection of fines and forfeitures, and to grant reprieves for a period not exceeding sixty days, during the time of conviction, for all offenses, except in cases of impeachment. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. And if the Legislature should fail or refuse to make final disposition of such case, the sentence shall then be enforced at such time and place as the Governor, by his order, may direct. The Governor shall communicate to the Legislature, at the beginning of every session, every case of fine or forfeiture remitted, or reprieve, pardon, or commutation granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, and the date of the remission, commutation, pardon or reprieve.

Sec. 14. The Governor, Justices of the Supreme Court, and Attorney General, or a major part of them, of whom the Governor shall be one, may, upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments, and grant pardons after convictions in all cases, except treason and impeachments, subject to such regulations as may be provided by law, relative to the manner of applying for pardons.

Sec. 15. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the "Great Seal of the State of Nevada."

Sec. 16. All grants and commissions shall be in the name and by the authority of the State of Nevada, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Sec. 17. A Lieutenant Governor shall be elected at the same time and places, and in the same manner as the Governor, and his term of office and his eligibility shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of the office, or be absent from the State, the President pro tempore of the Senate, shall act as the Governor, until the vacancy be filled or the disability cease.

Sec. 18. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the duties of said office, resignation or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor, for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, and at the head of any military force thereof, he shall continue Commander-in-Chief of the military force of the State.

Sec. 19. A Secretary of State, a Treasurer, a Controller, and an Attorney General, shall be elected at the time and places, and in the same manner as the Governor. The term of office of each shall be the same as is prescribed for the Governor. Any elector shall be eligible to either of said offices.

Sec. 20. The Secretary of State shall keep a true record of the official acts of the Legislature and Executive Departments of the Government, and shall, when required, by the same, and all matters relative thereto, before either branch of the Legislature.

Sec. 21. The Governor, Secretary of State, and Attorney General shall constitute a Board of State Prison Commissioners, which Board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall also constitute a "Board of Examiners," with power to examine all claims against the State, (except salaries or compensation of officers as fixed by law), and perform such other duties as may be prescribed by law. And no claim against the State, except salaries or compensation of officers fixed by law, shall be passed upon by the Legislature, without having been considered and acted upon by said Board of Examiners.

Sec. 22. The Secretary of State, State Treasurer, State Controller, Attorney General, and Superintendent of Public Instruction, shall perform such other duties as may be prescribed by law.

Mr. DUNNE. Before the question is taken on the final passage of the article, I call the attention of the member who gave notice of his purpose to move an amendment in respect to the term of office of four years for the Governor. If he wishes to offer that amendment now is the time to do so, unless gentlemen think that the matter can be reached in the schedule.

Mr. FITCH. I believe I gave that notice, but upon reflection, I will not offer the amendment.

SURVEYOR GENERAL.

Mr. CHAPIN. I wish to move an amendment in Section 19, to add after the word "Controller," the words, a "Surveyor General," so that the section will read—

"A Secretary of State, a Treasurer, a Controller, a Surveyor General, and an Attorney General shall be elected," etc.

The PRESIDENT. That can only be done by unanimous consent.

Mr. NOURSE. I object. What do want of a Surveyor General?

Mr. CHAPIN. Then I move to recommit the article with instructions to make that amendment. We have public lands which will require the attention of such an officer.

Mr. DELONG. I believe the Act of Congress donates to us five hundred thousand acres, and the State may require to have it segregated, by the joint action of the Surveyor General of the United States, and the Surveyor General of the State.

Mr. CHAPIN. There is no doubt that we need such an officer.

Mr. NOURSE. I would like to see the law in respect to that donation. I know that Minnesota got her lands without any Surveyor General.

Mr. DELONG. I think I can find the law for the gentleman.

Mr. CHAPIN. I move to suspend the rules in order to make the amendment without recommitment.

The question was taken, and the motion was not agreed to.

The PRESIDENT. The question now is on recommitting the article, with special instructions, to make the amendment.

Mr. NOURSE. I rise to a question of order. The time has arrived for the recess.

The PRESIDENT. The gentleman is correct. The hour (twelve o'clock) for the recess having arrived, the Convention is at recess until two o'clock.

AFTERNOON SESSION.

The Convention met at two o'clock, and was called to order by the President.

The SECRETARY reported that twenty-eight members were present.

EXECUTIVE DEPARTMENT—SURVEYOR GENERAL.

The PRESIDENT. The business before the Convention is, the consideration of the motion made by the gentleman from Storey, (Mr. Chapin), to recommit Article V, entitled "Executive Department," with instructions to amend Section 19, by inserting after the word "Controller," the words, a "a Surveyor General?"

Mr. CHAPIN. I will modify my motion. I move to refer the article to a select committee of three, with instructions to make that amendment and report immediately.

Mr. NOURSE. I have a word to say about that motion before the vote is taken. It has been suggested by the gentleman from Storey on my right, (Mr. DeLong), with his usual accuracy of legal citation, that the law granting lands to the several States for the purposes of internal improvements, provided that such lands should be selected by the United States Surveyor General, acting in conjunction with the Surveyor General of the State, or words to that effect. Now, sir, that law was passed in 1841, and it reads as follows:—

"There shall be granted to each State specified in the first section of this act five hundred thousand acres of land for purposes of internal improvement: provided, that to each of the said States which has already received grants for said purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such State has already received as aforesaid, make five hundred thousand acres, the selections in all of the said States to be made within their limits respectively, in such manner as the Legislatures thereof shall direct; and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale by any law of Congress, or proclamation of the President of the United States, which said location may be made at any time after the lands of the United States in said States respectively shall have been surveyed according to existing laws. And there shall be, and hereby is, granted to each new State that shall be hereafter admitted into the Union, upon such admission, so much land as, including such quantity as may have been granted to such State before its admission, and while under a Territorial Government, for purposes of internal improvement as aforesaid, shall make five hundred thousand acres of land, to be selected and located as aforesaid."

Now, Mr. President, I do not see, so far as that statute goes, or so far as relates to any other lands which this State is going to receive from the General Government, what a State Surveyor General has to do. In relation to school lands: there are no grants of school lands until the townships are divided into districts and surveyed, so as to know where the sixteenth and thirty-sixth sections are. After the survey, showing where the section lines are, those sections may be located; and only after the United States has surveyed the lands, can we make the selection. What on earth, then, have we for a Surveyor General to do? And why should we fill up our State Government with sinecure offices? I can see only one advantage to be derived, and that is, that some very good fellow indeed may get a sinecure office. An office is to be created, with absolutely no duties to be performed, just for the sake of giving it away to somebody. For these reasons, I shall vote against the motion to recommit.

Mr. DeLONG. The gentleman has read the original act of Congress, but to that act there have been at least a dozen amendments. Now, sir, it happened to be my duty, as well as my pleasure, to act as counsel in a case involving the title to the land where the town of Red Bluff is situated. That land had been located by school-land warrant, by N. L. Clark and others, in 1852, and finally passed into the hands of J. Granville Doll, he claiming under the location of school-land warrants made before the division or subdivision of townships made by the General Government. The case may be found in the Fourth California Reports. After the United States survey was made, so as to establish the division lines, it became a serious question as to the validity of those locations under the school-land warrants, but they were confirmed by the Supreme Court of California. The citizens of Red Bluff then, at my suggestion, applied to the Land Department, at the office in Marysville, to have that location sanctioned and confirmed, but the Land Department of California denied us the relief we sought. We then applied to the United States Land Commissioner in Washington, Judge Edmonds, and the matter was submitted before him upon briefs prepared by Mr. Edward Cadwallader, of Sacramento, and myself; and Judge Edmonds decided in favor of the citizens of Red Bluff. That decision is now on file in the office of the Secretary of the Interior. In his decision Judge Edmonds held that the segregation contemplated by law in relation to school-land warrants was to be made by the coöperation of the United States Surveyor General and the Surveyor General of the State of California, acting coördinately, and that the reports of those two officers, if they agreed, should be submitted to the Land Department for approval. That was the decision of Judge Edmonds in the case of the citizens of Red Bluff vs. J. Granville Doll, which is now on file in the city of Washington. I do not remember the language of the statute, although I was engaged five days in trying the case, and nearly twenty more in making my brief; but I know it was a point made by me in the case, and Judge Edmonds distinctly decided, that the segregation of the public lands should be a joint act on the part of the officers of the State and those of the General Government. It was an equity right on the part of the State. They were entitled to so many acres before they were segregated, and when that segregation took place, the operations of those officers must be approved by the Land Department.

Mr. NOURSE. That is precisely so; but there is one thing which is overlooked. The gentleman neglects to make the statement that

the State authorities simply took such action as was prescribed by the Legislature of California. If the Legislature chose to create the office of Surveyor General, and to say that he should locate these lands, then, of course, it is competent for him to act.

Mr. DeLONG. Will the gentleman allow me to ask him a question? If we do not provide for a Surveyor General, what officer will have that power?

Mr. NOURSE. Why, it will be done as it has repeatedly been done in almost all the Western States. It may be done by the Governor, the Secretary of State, or any other officer. The law prescribes that the segregation shall be made after the survey by the United States. All there is to do is, not to run the lines, but simply to make the selections, which the Governor, the Secretary of State, or any other officer can do, just as well as a Surveyor General. There is no surveying to be done about it, but we avail ourselves of the survey made by the United States. This very decision in respect to the location of those school-lands which the gentleman has referred to, sustains my view. It was decided, as he says, that that location had no operation whatever, until the action by the State Government had been approved by the United States authorities, after the survey. Under the law which I have read, neither this grant for internal improvements, nor any other grants to the State by the General Government, can be located and confirmed until the section lines are run; and they must, of course, be run by the United States Surveyor, before such location can possibly be made. So it appears, therefore, that this office is entirely unnecessary. We may, if we please, create such an office, and give the incumbent a salary, if our State expenses are not high enough without; and then the Legislature may assign to him, if they please, the duty of making these selections. I do not dispute that; but I say there are no duties necessary to be performed, which would require such an officer, and if we create the office, it is merely a wanton expense imposed upon the people of this State.

Mr. DeLONG. The Constitution which we propose to adopt, names the respective State officers, and defines their duties, and I believe it is a principle of law that the Legislature cannot, where the Constitution prescribes the duties of an officer, clothe him with any other or further powers and duties, than those which are so defined in the Constitution. Now, I submit that by the terms of this section, neither the Governor, the Lieutenant Governor, the Controller, the Secretary of State, nor any other officer of the State, is authorized to make these selections, and no such duty can be imposed, nor any such power conferred, upon either of them.

The PRESIDENT. Will the gentleman allow me to correct him. If he will look at Section 21, of this article on Executive Department, he will find that the officers of the State are required to "perform such other duties as may be prescribed by law."

Mr. DeLONG. Very well; I presume then, that that position is untenable, and the Legislature might confer upon the Governor, Attorney General, or other State officers, further powers. That provision had escaped my attention. But then, there is another principle of law which intervenes, and that is, that if the Legislature prescribes any further duties to be performed by an officer than those which were prescribed by law at the time of his election, he is not compelled to perform those additional duties, and probably would not, without additional compensation. If that is the case, where is the saving of money?

Mr. NOURSE. Where is the authority for that principle of law?

Mr. DeLONG. I suppose it would not be considered good authority by the gentleman from Washoe, because it is the authority of the Supreme Court of California, and to him I might about as well quote Old Mother Goose, since he holds that court in utter contempt. I suppose it will be necessary to get Minnesota authorities, if I want to convince him. It has been suggested to me that that was the only way to show the gentleman from Washoe that a State can build a railroad.

Now, I insist that this office of Surveyor General is necessary, because the locations must be made according to the division and subdivision lines, as established and laid down by the General Government. In the making of the selections of school-lands, as provided by law, we shall certainly need that officer. But we can fix his salary, or the maximum of his salary, at a very low figure. I take it for granted that in any new country, official surveyors are required, and especially where, as in our case, there are already on the statute books some laws relating to such officers. We propose to retain the statutes which we have on our territorial statute books in relation to County Surveyors, and it would be a sort of adventure, in my opinion, to leave out this office of Surveyor General.

Mr. BROSNAN. I am disposed to think that the office of Surveyor General is a necessary one, and one principal reason why I shall vote for it is this: that in case of a dispute or controversy between two counties in regard to their boundary line, it is important to have an authority to which either county may appeal. There ought to be some head to decide where the dividing line should be located in such a case. If the duties of the office are not likely to be onerous, as seems to be the general impression, then I am willing, if gentlemen wish it, to leave the Legislature to establish the amount of his compensation. I hope, at all events, the amendment will be adopted.

Mr. KENNEDY. I am in favor of the motion to recommit, with the proposed instruction, and will suggest whether it would not be necessary to amend Section 23, also.

Mr. CHAPIN. Yes, sir; I will modify my motion so as to embrace an amendment to Section 22, by inserting therein the words "a Surveyor General" after the word "Controller." It is the same amendment as that proposed to be made in Section 19.

The question was taken on the motion to recommit, with the instruction, as modified, to a special committee of three, and it was agreed to.

The PRESIDENT appointed Messrs. Chapin, DeLong, and Proctor, as the committee.

Mr. CHAPIN, from the special committee, to which was recommitted Article V, with instructions to amend Sections 19 and 22, by inserting in each the words, "a Surveyor General," immediately reported the same back to the Convention amended in accordance with the instructions.

On motion of Mr. DELONG, the rules were suspended in order to receive the report.

On motion of Mr. HAWLEY, the amendments reported by the committee were agreed to.

Mr. KENNEDY. I desire to make a suggestion so as to obtain the sense of the Convention upon it, and that is, whether or not the State officers are to receive any extra compensation for the performance of those extra duties provided for in Section 22.

The PRESIDENT. I should judge that it is not so contemplated, and I think it is expressly provided elsewhere that they shall not.

Mr. CHAPIN. I would suggest the propriety of an amendment in Section 21, that the Surveyor General be named in the place of the Attorney General as one of the Board of State Prison Commissioners.

Mr. DELONG. No, I would not do that; the Surveyor General may be away surveying when it is necessary for the Board to meet.

Mr. CHAPIN. And the Attorney General may be somwhere else, also.

Mr. DELONG. He has no business to be.

Mr. CHAPIN. Is he required to be at the Capital?

Mr. DELONG. That is his place, certainly.

The question was taken by yeas and nays on the final passage of the article, and the vote resulted—yeas, 29; nays, 1—as follows:—

Yeas—Messrs. Banks, Brosnan, Brady, Chapin, Collins, Crawford, Crosman, DeLong, Dunne, Fitch, Folsom, Gibson, Haines, Hawley, Hovey, Hudson, Kinkead, Kennedy, Mason, McClinton, Murdock, Nourse, Parker, Proctor, Sturtevant, Taglabue, Warwick, Wetherill, and Mr. President—29.

Nay—Mr. Lockwood—1.

So the article was passed.

RIGHT OF SUFFRAGE—THE SOLDIERS' VOTE.

Mr. CROSMAN. I will ask leave of the Convention, inasmuch as Article II has been recommitted for amendment, to propose a further amendment to that article here, as I should otherwise have to propose it when the article comes up again in Convention. The amendment I wish to propose is in Section 5 of the original Article II—or Section 4 as it now stands—to insert the following:—

"*Provided*, That the votes so cast for officers of a lower grade than State officers, shall be made to apply to the county from which said voters were recruited.

The Convention will, I think, readily see the effect of this amendment. Take, for instance, Lyon County, where there are some four or five hundred recruits now. If that vote is counted in the county, upon the county ticket, it may change entirely the aspect of things there. A large proportion of those soldiers were recruited from Storey County, and the object of my amendment is to provide that the soldiers' vote shall be counted in the respective counties in which they shall have been recruited.

Mr. BROSNAN. I had that idea in my mind at the time I offered a substitute for this section, providing that, in the election of officers above the grade of county officers, the soldiers' vote should be counted, but I apprehend the difficulty is obviated by the language as it now stands. It says the right of suffrage shall be enjoyed "by all persons otherwise entitled to the same." They are required by other provisions of the Constitution to have been residents of the county thirty days before voting, etc., and I think that language, as it is, if it is fairly understood and construed, covers the difficulty. If they are not otherwise qualified to vote for the officers of the county, although they may be located in the county as soldiers, they would not be entitled to vote there. In other words, they would not be entitled to vote for county officers in a county, in consequence merely of their being there, in the service of the United States. That would be my understanding of it.

Mr. CROSMAN. They may acquire a residence by being there thirty days, and a majority of them have already been there long enough for that. I think, in order to make the matter clear, some explanatory clause should be inserted, and it seems to me that this is the proper place for it.

Mr. KENNEDY. I hope this amendment will be adopted. Perhaps we feel this difficulty in our county more than they do in any other. It always has been a question in this Territory, (although I believe it has been passed upon in California,) whether or not soldiers stationed in one county are entitled to vote there, having been recruited in other counties. I do not think it is fair that those who are recruited in Storey County, for instance, should be allowed to come up and vote in our county elections.

Mr. NOURSE. I agree with the gentleman from Storey, (Mr. Brosnan,) that this matter is already provided for. This section seems to me to provide only against the loss of the right of voting on the part of the soldier who may be out of the State, and we find in another section a provision that "no person shall be deemed to have lost a residence by reason of

his absence while employed in the service of the United States."

Mr. CHAPIN. I would remind the gentleman that Sections 3 and 4, as here printed, in the old Constitution, have been stricken out.

Mr. NOURSE. Then there certainly should be some provision made, if there has not been already.

Mr. PARKER. I have no objection to this amendment being inserted, but I would like to ask how it is going to operate? How are soldiers, under the command of their officers, to get away in order to vote? Are they going in each county to prepare ballot-boxes and send them to every officer who has command of soldiers recruited in that county, or are the men expected to go to that county to vote? For instance, are men recruited in Virginia City to go there from Lyon County to cast their votes?

Mr. CROSMAN. The last clause of this section provides for that. It says:—

"Provision shall be made by law regulating the manner of voting, holding elections, and making returns of such elections."

Mr. NOURSE. I call for the reading of Section 3 as it has been amended.

The SECRETARY read Section 3, as follows:—

SEC. 3. For the purposes of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum at public expense; nor while confined in any public prison.

Mr. NOURSE. It seems to me that that covers the whole case, inasmuch as the soldier has not gained or lost any residence. The Legislature has simply to provide the means to establish the regulations of elections, and I take it the Legislature would be abundantly authorized under that section, to provide, as has been done in other States, that the county officers or commissioners, or whatever officers may be appointed for the purpose, may take the vote of the soldiers, wherever they may be, and that such votes shall be counted as a part of the votes of the respective counties where they belong. For instance, the commissioner at Fort Churchill might find one hundred voters from Storey County, who would vote for officers in Storey County; and then ten voters from Washoe County who would vote for officers in that county, and so on through the entire list.

The PRESIDENT. I call the attention of gentlemen to Section 3 of the Enabling Act, which will probably furnish some guide for the Convention in this matter. It reads as follows:—

"SEC. 3. *And be it further enacted*, That all persons qualified by law to vote for representatives to the general assembly of said Territory at the date of the passage of this Act, shall be qualified to be elected, and they are authorized to vote for and choose representatives to form a Convention, under such rules and regulations as the Governor of said Territory may prescribe; and also to vote upon the acceptance or rejection of such Constitution as may be formed by said Convention, under such rules and regulations as the said Convention may prescribe; and if any of said citizens are enlisted in the army of the United States and are still within said Territory, they shall be permitted to vote at their place of rendezvous, and if any are absent from said Territory by reason of their enlistment in the army of the United States, they shall be permitted to vote at their place of service, under the rules and regulations in each case to be prescribed as aforesaid," &c.

Mr. NOURSE. That applies only to the first election, but we are here making a law for all time—an organic law. I understand that this section of the Enabling Act provides only for this first election under the Constitution, and for the vote on the Constitution.

Mr. CHAPIN. That is all.

Mr. BROSNAN. The *modus operandi* of taking the votes of those who are in the military service of the country, (although it is a matter of legislation, to be sure, to prescribe the manner in which it shall be done,) is, as I understand it, this:—The commanding officer has upon his roll the place of enlistment of each soldier—the name of the man and where he enlisted—and by means of that roll the votes of the soldiers from each county respectively are taken and transmitted to the State officers. They can see by looking at their rosters or muster-rolls where each soldier comes from, and to what county his vote will properly apply.

Mr. CROSMAN. That is my understanding, also, but it looks to me as if it would be good policy to make it clear, by putting it into our Constitution. I really hope that this amendment will be inserted, in order that no question on this subject may arise hereafter under our Constitution.

Mr. CHAPIN. I would like to hear the section as it will stand if the amendment is adopted.

The Secretary read as follows:—

SEC. 4. The right of suffrage shall be enjoyed by all persons otherwise entitled to the same who may be absent from this State in the military or naval service of the United States; *provided*, that the votes so cast for officers of a lower grade than State officers shall be made to apply to the county from which the voter was recruited; *provided further*, that the payment of a poll-tax, or a registration of such voters shall not be required as a condition to the right of voting. Provision shall be made by law, regulating the manner of voting, holding elections, and making returns of such elections.

Mr. NOURSE. I will suggest, that perhaps the gentleman would like to make a further change in his amendment. We know that in the enlistments of volunteers in various States in the East, a great many are enlisted by counties who do not reside in those counties. Men go to certain counties to enlist, tempted by the higher bounties offered by them. For instance, here, men might go to Storey County to enlist, and, under this provision, would not they be made voters in Storey County, though not residents there at the time they were recruited?

Mr. CROSMAN. I think the wording of the amendment already covers that objection.

The question was taken on Mr. Crosman's motion to instruct the special committee to make the amendment proposed by him, and it was agreed to.

COMMITTEE OF THE WHOLE.

Mr. WARWICK. I move that the Convention go into Committee of the Whole, for the consideration of Article X.

Mr. FITCH. I move to amend the motion by including Articles II, III, and IV, so as to finish them up as we go along. I want to report them back to the committee, and have them passed.

Mr. WARWICK. I accept the amendment.

The question was taken, and the motion, as modified, was agreed to.

The Convention accordingly resolved itself into Committee of the Whole [Mr. CROSMAN in the Chair] and proceeded to the consideration of the several matters which had been referred to such committee.

RIGHT OF SUFFRAGE—VOTERS' OATH.

The Committee first took up for consideration Article II, entitled Right of Suffrage.

The CHAIRMAN. This article has been recommitted to the Committee of the Whole, with instructions to amend Section 2, by striking out the oath, and all pertaining thereto; also, to amend Section 4, by inserting after the word "provided," where it first occurs, the words, "that the votes so cast for officers of a lower grade than State officers, shall be made to apply to the county from which said voters were recruited; and provided further"—

Mr. DUNNE. I move that the Secretary be instructed to make the amendment, in accordance with the instructions of the Convention.

Mr. KENNEDY. I do not know that it will be of any use, the instructions having passed the Convention, to oppose, at this time, the striking out of this oath. But I cannot consent that the oath shall be stricken out entirely, without entering my protest against it. Other gentlemen have told you, in eloquent strains, why this provision denying the right to vote to persons who have held civil or military office under the so-called Confederate States, or either of them, should not be stricken out. Now, much as I despise that class of men, and much as I regret the adoption of any provision giving them a power at the ballot-box, by which any one of them might annul and destroy my vote, yet there is another class of men for whom I have a more thorough contempt—men who will remain in our loyal States and Territories, too cowardly to go and fight the battles of the Confederate States, but attempting, through the ballot-box, and by all other means in their power, even while under the protection of our government, to destroy that government. I say those men are more to be despised than the men who will manfully stand up and take the chances of receiving a bullet while they are fighting for that rebellious government. Now, how do gentlemen propose to prevent those men from voting, although their sentiments may be more disloyal and injurious to this government than those of the very men who have held civil or military office under what they call the Confederate Government? Gentlemen say we should leave it to the Legislature, but I deny the right of the Legislature to establish any test, other than the tests prescribed in this Constitution, when that instrument has once attempted to define who shall, or shall not, possess the right of suffrage. You may say that it is inexpedient and impracticable to challenge these men at the polls. Very well; then I say, let us challenge them before the Registrar. Allow us some opportunity to keep them from rendering nugatory the votes of good and loyal men at the polls. What right has the Legislature to prescribe any oath like this, when the Constitution has prescribed none? How can they make any test, other than that which the Constitution makes? I do not see where they get any such right. Any man who comes within the qualifications prescribed by this Constitution, is entitled to go to the ballot-box and vote, and no law can be passed to prevent him. Now, I ask the members of this Committee, if they are unwilling to have a provision of this kind placed in our Constitution, under the plea that it is impracticable? I deny that it is impracticable. Although gentlemen have said that under such a provision, men may block up the polls and only allow perhaps a hundred men to vote during a whole day, yet I think the Legislature may provide against any evil of that kind, by having a larger number of inspectors and judges of elections. If that oath is impracticable, why is not the oath impracticable which we have, under our existing laws? A minority can, under our present laws, go to the polls, challenge each and every voter, compel them to answer questions, and take the oath prescribed by the Legislature. Why do they not do the same thing now, as they would do if this oath were required? The gentleman from Storey (Mr. Chapin) suggested this morning, that this oath would have to be added to the one already prescribed. I admit that, but how long does the gentleman suppose it would take to go through that entire oath? Probably not more than two minutes.

Mr. CHAPIN. Will the gentleman allow me to interrupt him, in order to say that I will most cheerfully vote with him to add that amendment to Section 8.

Mr. KENNEDY. I do not care to what it is added, if it is only in the Constitution somewhere, so that we may have the privilege of challenging every man whose loyalty we suspect, and making him take the oath. I care not at what time he takes it, but I say, give us an opportunity to challenge him at some time, before he shall be permitted to offset our votes.

Mr. JOHNSON. I made a few remarks this morning, while this matter was under consideration, in which I coincided with the views expressed by some of the gentlemen from Storey County as to the impracticability, or the probable impracticability, of enforcing a provision requiring voters to take this oath.

Mr. FITCH. (interrupting.) I rise to a point of order. I very much dislike to do so, but I think it is a duty. I make the point that we must obey the instructions of the Convention. This article has been recommitted to us with definite instructions to make specific amendments, and we cannot vary from those instructions. We must comply with the instructions of the Convention, and can do no more, and no less.

Mr. JOHNSON. I suppose gentlemen may be permitted to give their views upon that subject.

Mr. FITCH. I do not desire to stop the gentleman.

Mr. JOHNSON. If the gentleman makes any point of order, I suppose it must be that no debate is now in order.

Mr. FITCH. I do not make it.

Mr. JOHNSON. The gentleman had better either make his point of order or not make it.

Mr. DUNNE. I will make the point of order, that no debate is in order, and I would like to know what it is that gentlemen who insist upon debating this question propose to accomplish by it. I hold that we are in Committee of the Whole instructed to make certain amendments, and to do nothing else. We have no right to amend further than we are instructed. The Convention has resolved to adopt these amendments, and we are instructed to insert them; that is the resolution which we came into Committee of the Whole to obey. Do gentlemen propose to disobey the instructions of the Convention? If so, let them state their reasons, and let us see whether it is competent or not for us to disobey. I do not believe it is competent. I believe we should immediately rise and report the amendments back according to instructions, and then if the sense of the Convention has changed, let the Convention rescind the vote by which we were instructed to insert the amendments.

The CHAIRMAN. The Chair is of opinion that it is the duty of the committee to make the amendments in accordance with the instructions of the Convention, which are absolute and definite in terms, and the Chair is inclined to the opinion that it is not in order to debate the subject.

Mr. JOHNSON. I acquiesce in the decision of the Chair.

Mr. LOCKWOOD. I move that the gentleman from Ormsby, (Mr. Johnson,) be allowed to proceed.

Mr. JOHNSON. Oh no; I do not desire it; I want the rules enforced.

Mr. DUNNE. I do not think the motion is in order.

Mr. WARWICK. With the permission of the gentleman from Humboldt, I wish to say a word. If it is our imperative duty to obey the instructions of the Convention now, when the article goes back to the Convention cannot the Convention amend it?

Mr. BANKS. The only duty we have to do is merely a clerical one, and I understand the Secretary has already been directed to make the amendments in accordance with the instructions.

Mr. McCLINTON. If in order, I would like to offer an amendment to Section 4.

The CHAIRMAN. No amendments are in order beyond the instructions of the Convention.

The SECRETARY stated that the amendments had been made in the article, in accordance with the instructions of the Convention.

Mr. FITCH. I move that the Committee rise and report the article back to the Convention, and also report that the Committee have obeyed the instructions of the Convention.

The question was taken, and the motion was agreed to.

IN CONVENTION—VOTERS' OATH.

The PRESIDENT having resumed the Chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article II, entitled Right of Suffrage, and had made certain amendments therein, in obedience to the instructions of the Convention.

Mr. DUNNE. I move that the article be referred back to the Committee of the Whole with special instructions to insert an amendment which shall require that oath to be administered before the Registrar, at the time of the registration of voters.

Mr. FITCH. It is not necessary to refer it to the Committee of the Whole. It would be better to refer it to a special committee, with instructions to report immediately.

Mr. DUNNE. I accept the suggestion as a modification of my motion.

Mr. BANKS. I would inquire if the gentleman has the amendment he proposes, in form, so that we may know what his instructions are.

Mr. DUNNE. I have not prepared them specifically, but I think they may as well be prepared before the question is taken.

Mr. TOZER. The provision I believe was to the effect that every person who shall be challenged, shall take and subscribe this oath. Now I wish to know whether the oath is to be administered to every man, whether he is challenged or not? It seems to me to be almost a farce to require every voter in the Territory to take that oath. What is the use of requiring the oath of a well known Union man, like yourself, Mr. President, and I might perhaps say, every other member of this Convention?

Mr. DUNNE. No Union man will object to the little trouble it would be to take the oath, in order to preserve the purity of the ballot-box.

The PRESIDENT. It will be necessary for

these instructions to be drawn up in a specific form.

Mr. COLLINS. I hope, in reducing the amendment to writing, the gentleman will not make it obligatory upon every man to take this oath.

Mr. DUNNE. Unless you make it obligatory upon all, how are you going to make it effective? Who is going to make a discrimination, unless it is obligatory upon the Registrar to demand the oath from each and every man before recording his name? Twenty disloyal men might go and get registered, and no oath be required of them, and yet when a well known Union man came up, he might be challenged, and required to take the oath.

Mr. COLLINS. I think that difficulty can be easily obviated. I have no objection to taking the oath three times an hour, if it will do any good, but I do object to imposing any duty upon citizens unless there is shown to be an absolute necessity for it. It is presumed that the Registrar, in every precinct, will be selected for his strong Union sentiments, that Union men in every ward, and in every section of the State will see to it that certain voters, who may be suspected, are challenged, either by the Registrar himself or whoever it may be who has the authority of excluding votes; or if that is not practicable, then some plan may be devised by which the challenging can be done by some other party. I would like to inquire how often this registration is proposed to be made?

Mr. DUNNE. Once a year, I suppose; every time a man pays his poll-tax.

Mr. COLLINS. Now this is a matter of considerable consequence. It devolves a great amount of labor upon the Registrar himself, and upon those who are registered, also. What is the necessity of making this requirment? If I can be made to see that there is any necessity for it, I shall vote most heartily for the oath, but I do object to imposing any unnecessary duty upon the electors, and especially upon men whose unionism never was doubted.

Mr. DUNNE. Does the gentleman from Storey consider that any such action at all is necessary?

Mr. COLLINS. He does.

Mr. DUNNE. Then is not the Registrar the most proper person to leave it to? As to the amount of labor imposed upon him, many persons may come in at the same time, and he can administer the oath to all at once; and again, he will very soon acquire the habit of administering it quickly. It is not a very long oath after all, and will take but a moment's time. The gentleman suggests that before the election, men will see that some person is at the Registrar's office constantly, ready to challenge every man whose loyality is suspected, but he should remember the old adage, that "what is everybody's business is nobody's business." A good deal of the time there may be nobody at the Registrar's office to challenge, except perhaps, by chance.

Mr. COLLINS. I see no objection to allowing every voter in the district to lodge the names of A, B, and C, with the registering officer, as suspected persons. A man might say in writing, "I regard A or B as tinctured with secession and opposed to the Government, and I require his vote to be challenged." And I think, under such circumstances, the Registrar should be required to challenge the voter. But unless that is done, I do not see the necessity for that labor. I am as strongly as anybody in favor of preserving the purity of the elective franchise, and I would go as far as the farthest to secure that object, but I think it may be done without the necessity of challenging every voter. I think if, in my district, I lodge with the Registrar the names of ten men whom I regard as suspected, or whose loyalty I doubt, and who I think ought not to be allowed to exercise the elective franchise, unless they purge themselves, if I desire it the Registrar should be required to compel them to take the oath. But farther than that I do not think it is necessary to go.

Mr. DUNNE. I must regard with the utmost abhorrence the last proposition of the gentleman from Storey. It savors too much of the denouncements of a secret police. It is a proposition to allow any man to inscribe on a bit of paper, which he deposits with the Registrar, "I denounce A, B, C, as traitors!" I say it savors of the *mouchard* system of certain European countries. I desire rather to adopt one simple, broad, sweeping requirement, to which no man can take exception—a law which applies to all with equal force—and not a provision under which any man may be able to fasten upon another the brand of disloyalty. Let it be broad, and general, so that no man can complain that injustice is done to him.

Mr. MASON. I believe I have not, heretofore, obtruded my views upon the Convention, but upon a subject of this character, affecting the right of the elective franchise which belongs to every citizen, I desire to say that I do not think any safeguard would be too strong which can be thrown around that right. I do not think that any traitor should be allowed to exercise that birthright of freemen, under that government which he has raised his impious hands to destroy. I do not think that men, after having banded themselves together as assassins, after having perpetrated every crime—for treason involves the commission of all crimes—should be allowed to come forward and insult the majesty of the Deity by calling upon his name, and taking an oath denouncing the very crimes which they have committed. No man of that character, I say, should be allowed to exercise the right of suffrage upon any terms, unless an amnesty be granted, and unless he also takes a solemn oath, abjuring his treason thenceforth. I hope a registry law will be required to be passed, framed as strong as the English language can make it. There is no man who has the love of his country in

candy at heart, but is willing, if necessary, to come up and take that oath once a year; and if a man is a traitor, he should be compelled to take it. We have thousands of that class in our midst. I never had any fear in regard to conquering this rebellion. I have no fear of the freedom who are openly in arms against the Government; but the fear I have entertained, has been of those black-hearted, concealed traitors who are skulking among us. Here is where our danger lies.

I have been for many years a pro-slavery democrat. I was a newspaper editor, and a worker in the ranks of that party in Illinois, and I have made democratic stump speeches throughout every corner of that State. But when slavery itself became a traitor, and fired upon the flag of freedom; when armed treason raised its red right hand against the Government, then I, in common with other freemen of the North, "cried havoc, and let slip the dogs of war." We set wide open the doors of democracy, and let the day-light in. Why, sir, they said that poor, crazy, old John Brown must be hung; but this day old John Brown stands far higher in my estimation, than that vile old Israelite, James Buchanan. [Applause.]

Sir, I look upon this right of suffrage as my birthright. It is a right so sacred to the American citizen as circumcision to the Jew or baptism to the Christian, and even more so, because it is that which protects the rights and privileges of both Jew and Christian. I look upon this question, sir, allow me to say, as by far the most important one which has yet been brought before our Convention for its consideration, and that is the reason why I have attempted to take a part in the discussion, although I had not previously participated in the debates which have been going on. I was pleased, sir, with the young gentleman from Lyon (Mr. Kennedy) when he introduced this amendment. The force of his arguments, and the patriotic feeling which I could see beaming from his eye, aroused my admiration, and I said to myself, "that fellow will do to tie to." [Laughter.] This is the principle which we ought to establish, and I was really astonished to hear from the aged and distinguished gentleman from Storey (Mr. Collins) any words of opposition to it. And, sir, I hope that if he should ever occupy a position in the United States senate, he will not be in favor of giving the least show to a traitor. [Merriment.] For my part, before I would ever take those vile copperhead snakes to my bosom, I would hurl them from the battlements of hell, and sink them into hell so deep that the devils themselves would tremble to explore the fathomless abyss. [Applause and laughter.] That is the mercy I would show them. I have no disposition to grant them any favors. Let them thoroughly purge themselves before they are admitted to the exercise of the right of suffrage under that government which they have treacherously sought to destroy.

As I said before, I never have had any fear but this rebellion would be crushed, and I believe that before another year you will see the glittering ploughshare turning up the soil of the South, re-consecrated to freedom, where no despairing bondman shall bleed his chains. You will see the country redeemed, regenerated, and disenthralled from that curse that has ever been the great blight of the United States of America,—the blackest blot upon humanity. [Applause.] While I look upon the elective franchise as my birthright, and as the birthright of every American citizen, yet I say that, under existing circumstances, those men who have sympathized with the rebellion should be excluded from its exercise. You can find conclaves of these demons of treason all around us. There is scarcely a town in the Territory, nor, I believe, in California, but has its secret organization of them; and although they pretend to be Union men, you can see them chuckling over every temporary defeat of the Union arms, and every petty success of the rebels, the news of which comes flashing to us over the wires. Are we to allow such as these to come up and exercise the right of suffrage, and control the elections, against my vote, and the votes of other Union men? No, sir; it is impossible for me to consent to it. I look upon the United States Government as the most sublime edifice ever erected by the ingenuity of man, elevated and sanctified, too, by the sacrifices of patriotism, and by the choicest blood that ever besprinkled the temple of liberty. [Applause.] Before I shall be willing to grant mercy to these men who have rebelled against that Government, I want them to give back my dead. I want them to return my brother who fell at Pittsburg, or Shiloh. I want them to restore to health my son, who was wounded while upholding the flag of his country. I want them to do all that, before I can consent to render them my equals in the Government under which I live, and which, in my opinion, is the best Government in the world. [Applause.]

Mr. HOVEY. My object in introducing the amendment which I proposed was, to strike out the oath in the place where it is now incorporated, and to incorporate it in another place. I hardly think that any man can impugn my motives, on the score of loyalty, even to the extent of charging me with shrinking from any responsibility. I feel the smart which has been inflicted by this rebellion perhaps as much as any other member of this Convention, for the last news from the East brought me intelligence of the death of one whom I raised from boyhood. I think if gentlemen had listened to the suggestions of the honorable gentleman now in the Chair, (the President,) this matter would probably have been settled long before this.

Mr. DUNNE. I will make my motion in this form: I move to reconsider Section 7, of Article II, with instructions to frame an amendment,

which shall require every person seeking to have his name registered as an elector, to take and subscribe an oath of allegiance to the State and General Government, the committee to draft an oath and present it to the Convention to-morrow.

Mr. BANKS. I am in favor of that course, because I think it will save time.

Mr. FRIZELL. I do not know but I am "in the brush" in regard to this question, and I do not know that the few remarks I propose to make will be properly applicable, but if I should happen to get astray I hope I may be corrected and put right again. I need not say to you, Mr. President, and gentlemen of the Convention, that I came here solely to make a Constitution, or organic law. I did not come here to exert passions engendered by this terrible civil war; I came here only to make a straight-forward, honest, efficient Constitution for the proposed State of Nevada. In what few remarks I shall make, before I take my seat, I shall endeavor to keep that one object in view, and I would respectfully ask every member present, although I am myself but a humble individual, to consider carefully the capacity in which we are acting. The great fault which was found with the Constitution submitted to the people last year was the amount of legislation incorporated in its several articles and sections, all of which the people, the intelligent people of this Territory of Nevada, objected to and voted down indignantly.

Now, sir, so far as the influence upon us of this civil war is concerned, a very wise statesman once said, "I have no lamp by which my feet are guided except the lamp of experience;" and I reiterate that sentiment. I have nothing by which my course is guided but the lamp of experience. This is a civil war raging within our own limits, and we must deal with the exigencies as they arise from time to time. I have said, on another occasion, that anything pertaining to the allegiance or loyalty of the citizens of this vast republic who may be resident within our State, hereafter, I am disposed to leave, wherever it can be done, to the Legislatures that are to assemble in the future. But the fault I find, (although really I find fault with none of the members of this Convention, God bless them all, as citizens and brother Americans,) is, that I cannot help thinking that we are acting here too much upon the belief, or with the idea that we are the people—that we, assembled in this little contracted hall, in this city of Carson, are the people of the great State of Nevada, and that wisdom is going to die with us. I think that whatever we may suffer in this civil war, or however much we may feel it, we should still be guided somewhat by the examples of history. I profess to be conversant to some extent with modern history, and with that of the Middle Ages, and I think we might also find pertinent illustrations in ancient history. I will speak now, while it is fresh in my mind, of what was called the refugees of the American Revolution. That was a war waged for seven long years. Gentlemen may refer to the sufferings and sacrifices of this war in which we are engaged, but a stronger picture could scarcely be drawn than that of the sufferings and sacrifices of the patriots of the Revolution, who fought for seven years to establish in our land the principles of freedom and republicanism. It will surely be recollected by you, Mr. President, and no doubt by many others within the sound of my voice, that at the time when, as the poet says—

> "Wild war's deadly blast was blown,
> And gentle peace returning,"

our forefathers were seeking to build up a nation, gathering together the component parts, that which constitutes a nation as a whole, in all the branches of industry, commerce, art and science. George Washington and Patrick Henry, and all the other great, good, and god-like statesmen of those days, were engaged in that work. And, sir, what did they say and do in regard to those who were refugees at the close of that civil war? You will recollect that when the war was over the nation was laid waste in all her broad domains, that towns and villages had been sacked and committed to the flames, and that there was ruin and desolation on every hand. Then the patriot and statesman foresaw that the great need of the nation would be population; and what did those great and revered men say in regard to the tory refugees? They permitted those men, and every man who had taken up arms on the side of George III. to return to the country, under liberal and easy provisions.

I will not refer to the past any further. I dislike to speak of my personal affairs, or of my own patriotism, but this I will say, that I yield to no man in my love of country. I have two brothers in this war, and very many kinsmen, who have poured out their hearts' blood, and whose bones are now lying on southern soil. I yield to no man in my devotion to this Government—this united nation, every inch of it, from the lakes to the gulf, and from the Atlantic to the Pacific. Painter never limned, and poet never sang a greater or more glorious land than ours; nor has the human imagination ever conceived a nobler Government, devoted as it is to the glory, and greatness, and permanent good of the whole country. I abhor as much as any man the folly and treason of those who, in this war, have attempted the destruction of that Government. But, Mr. President, I pass that by, and I say to those men: "If you are willing to repent of your folly, I will take you by the hand. You have heretofore been my brothers; in this matter you have been wrong, but if you repent you may be my brothers still." If I could, by this means, lead such men back into the paths of political rectitude, I would look upon it as the noblest act and greatest privilege of my life.

The gentleman from Esmeralda, (Mr. Mesic,) makes an eloquent appeal, which I know comes from the bottom of his heart, and I impute to him none but the purest and most patriotic of motives; but I say when he makes that appeal it is more passion, engendered by his coming in contact with the class of men to which he has referred. Men of that class really are not rebels, for they have not taken up arms against the Government of the United States, and in favor of the usurpation of Jeff. Davis, but they are men whom I find it difficult to describe. I have not at command language which would be appropriate to delineate their character. They do not possess that high, generous, chivalric spirit which leads men to take up arms to carry out what they conceive to be a principle, that principle which has been inculcated in the political primary schools by their fathers, and since fostered and encouraged by demagogues. Those men who are in rebellion in the South are fighting for what they believe to be a principle—the principle of State Rights, or, as they term it, self-government. There are some tender points upon which I do not wish to speak, but I will say that that principle is one which strikes at the very root of our liberties, and the foundations of our Government. I hope to God that this war, when it is fought out, will put an end to that principle—a principle for which, by the way, I have contended for years, in consequence of the prejudices of early education. I had always heard my father and my grandfather speak in contemptuous terms of Alexander Hamilton, Chief Justice Marshall, John Adams, and others of those statesmen who were endeavoring to make the Federal Government strong; and I had heard them advocating what they called the principle of democracy, or States Rights. They held the great leaders of the old Federal party—as it was called in former times, when it was led by such men as Marshall, Hamilton, and other eminent Federalists—in the profoundest contempt, and to a great extent, my own mind was swayed and biased by their teachings. But in the past three or four years of my life I have seen my error. I find that I have been mistaken in allowing the passions of my breast to burn against men who held principles which I conceived to be opposed to true democratic principles. Those principles were dear to my heart, and in their defense, at that time, so help me God, I would have shed the last drop in my veins. But I now see that what I have been cherishing was a heresy, and I wish to leave the door open to others, so that when they, too, shall see the error of their ways, they may not charge us with having hid our light under a bushel and left them in the dark.

But now it is proposed that we shall prescribe an oath, and say to all such men, that although tears of penitence may run down their cheeks—aye, burning, melting tears—there is still no door open by which they can return to the path of political rectitude. I do not wish to proscribe men for political reasons. I tell you that the history of the world shows no example of the kind, and if there ever was a nation on God's earth that could afford to be generous and magnanimous it is the great and mighty people of the United States of America. We have invited the people of the whole world to come among us, and men have accepted that invitation, and come here, who could not pronounce our language, bringing with them their own customs and prejudices, often directly opposed to republican institutions, and yet we have received them as brothers. Now, are our own brothers to be excluded—the men who, in the Mexican war, aided in acquiring this very territory; the men who by that war gave us this very soil on which we are now standing; the men who stood shoulder to shoulder with us throughout that war—shall we deny to those men the right-hand of fellowship which we freely extend to the foreign born, ignorant of the very tongue we speak?

Now, while I stand up here and speak in favor of those men, I am not excusing their wrong deeds. But, admitting as much as I do against them, still I say I want to get them back. I want hereafter, if need be, to fight side by side with those men in battle; I want them to be my brothers. Let us leave this matter, therefore, so far as it is possible, to the Legislature which is to come after us.

This is a theme on which I might dwell for hours, but I will not occupy the time of the Convention. There are many subjects on which I would like to have spoken at length, but I knew that we came here to work, and I would not consume the valuable time. I will only say that these appeals to passion and prejudice may be very good for a political platform, but they are not good in the formation of a Constitution for the State of Nevada. Look at the Constitutions of other States. Look at Illinois, from which I am proud to hail—a State that has sent out her heroic sons in this war like Thebes of old, which poured forth a thousand warriors from each of its hundred gates. That State has already turned out a hundred and fifty thousand men. But look at the Constitutions of the most loyal States in the East. Have they not left these matters to the Legislature to determine who shall and who shall not vote? And shall we, away here on the frontiers, attempt to proscribe classes of men for all time to come? Shall we undertake to do what the State of New York, the Empire State, or the old Bay State of Massachusetts, or the Keystone State, Pennsylvania, from which the gentleman from Lyon (Mr. Kennedy) hails, or my own native State of Ohio, or yours, Mr. President, of Indiana, or Illinois, my adopted State, have none of them attempted to do? Let us, rather, follow their examples, and leave our Legislature to shape some law, and prescribe some oath, in regard to the elective franchise, which will admit these men to fellowship with us, as American citizens.

Mr. WARWICK. Will the gentleman allow

me ask him a question? Is he aware, or cognizant of the fact, that in the loyal States no Jury was allowed to vote during the pendency of the revolutionary war? I mean, during the revolution—not afterwards. Was there any State in which they were allowed to vote during the war of the revolution?

Mr. FRIZELL. I cannot answer the question, but I am willing to admit that there were none.

Mr. McCLINTON. I desire to ask the gentleman a question. I would ask if the gentleman understands that this oath proscribes the horden of rebels which may be poured into this Territory or State, after the rebellion is crushed? Does he understand that this oath proscribes these men forever from the exercise of the elective franchise among us?

Mr. FRIZELL. I think it is an undue assumption of power on our part, in making a Constitution, to so frame it as to hold out a menace against a class. That is an undue assumption in making or framing our Constitution, because any man can say then, when he enters the lines of the State of Nevada, "I find in your Constitution a provision which I find in that of no other State." I propose to leave this matter to the Legislature, that they may prescribe any oath they see fit. The gentleman from Esmeralda, (Mr. Mason,) in his remarks, dove deep into the classics, and into the human heart. He was not willing to give the traitors, as he calls them, any chance of returning.

Mr. MASON. Not until an amnesty is granted.

Mr. FRIZELL. Now, Mr. President and gentlemen, when I pray to Almighty God—which I do sometimes—I generally wind up my petition to Deity by using language something like this—

"That mercy I to others show,
That mercy show to me."

And, sir, as regards proscription or persecution, I abhor it, whether in a religious or a political sense. It does not enter into the principle or theory of our Government. I prefer to say with that noble poet, Alexander Pope—

"Let not this weak unknowing hand
Presume thy bolts to throw,
And deal damnation round the land
On each I judge thy foe."

That is the action which some gentlemen here propose to take—to hurl the bolts of condemnation irreverently on others' heads. I propose rather to leave the door open for repentance, so that at some time they may come back—to leave the matter in such a shape that the Legislature to come after us may take that action which they may deem proper when the occasion arises. This rebellion will, undoubtedly, as I said on a former occasion, take different shades. I was reported in the *Virginia Union* as saying that it would take different shapes, but I did not mean that. I was also reported as speaking of a war of races in England, when I said the "The War of the Roses." But the Reporter of that paper, probably in the hurry of the moment, inadvertently made a mistake, and I can forgive it. I say again that this rebellion will probably take different shades as time rolls on, and the successive Legislatures should be left each year to "temper the wind to the shorn lamb," if it is in their natures to do so. I do not desire, at all events, to fix anything here irrevocably.

Now a few words more, and I have done. Section 2 of this Article provides as follows:—

"No person who has been or may be convicted of treason or felony, in any State or Territory of the United States, unless restored to civil rights, and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government, and no idiot or insane person shall be entitled to the privilege of an elector."

That is, no person shall be entitled to the right of suffrage who has done any of these things. Now how are you going to arrive at it? Does it not belong to the Legislature, under the Constitution, to prescribe the form and manner of arriving at the fact? It certainly does not belong to us. I repeat that this rebellion which the nation is now engaged in putting down, will take different shades, as to its intensity, from year to year, and it does not belong to a Constitution necessarily framed in a time of excitement, to fix that which is irrevocable in respect to these matters. It plainly and naturally belongs to the Constitution to establish that only which is not to be changed. And the same remarks will apply to the provisions of this section immediately under consideration. We should not legislate too much in that respect.

I started out, Mr President, by saying that I did not know but I was "in the brush" in regard to this matter. I do not know, under the parliamentary rules which govern us, exactly what the vote is to be, but I think I have spoken within proper bounds. I hope this oath will be left out entirely, and that it will be left to the Legislature to form and prescribe such an oath as may at that time be deemed fit. I have given what I believe to be good reasons for my position, and I think any gentleman who will read the sections to which I have referred, and consider them carefully, will see that they cover all the ground necessary to be covered.

Mr. MASON. By way of an explanation, I desire to say, that in the remarks I made, my object was, not to favor the idea of forever excluding American citizens from the right of suffrage, but it was rather to throw a safeguard around the elective franchise here—and I stated it, I believe, in language sufficiently emphatic—until an amnesty be granted by the General Government. Now, I am willing to indorse the gentleman's prayer—

"That mercy I to others show,
That mercy show to me."

The same mercy which the rebels showed at Fort Pillow, the same mercy they have shown in dooming to starvation those unfortunate brave men who have fallen into their hands, full of life and vigor, I am willing to show to them. That is their kind of mercy — the tender mercies of the wicked, which are cruel. I am willing, also, that the Legislature should "temper the winds to the shorn lambs," by and by; but just now I want to use a somewhat greater force against these rebel rams. We do not want them to pull their wool over our eyes, that is all. [Laughter.]

[Mr. CROSMAN in the Chair.]

Mr. JOHNSON. At a previous stage in the progress of this article, it will be remembered, I favored the striking out of the word "disloyal," where it occurred in Section 2, and I think I succeeded in making my reasons plainly understood for assuming that position. I will state again, in brief, the motives which prompted me to vote in favor of striking out that word. It was not that I was in favor of allowing a disloyal man to vote, or of allowing the vote of any disloyal man to neutralize or destroy my vote, or that of any other loyal citizen, but I regarded it then, and I regard it now, as improper to clothe the judges and inspectors of election with too much authority — to clothe them with power which might be exercised in such manner as to destroy the right of voting of the most loyal man in the land. At no stage have I objected to incorporating in the Constitution, in what I would regard as being its appropriate place, a test oath similar to that which has been proposed in this section. But, sir, I foreshadowed, in the remarks I made this morning on this question, what were my objections to the incorporation of that test oath in the particular section in which it was placed. The principal objection which occurs to my mind is this: that it would be in the power of a few persons to deprive altogether, of the right of suffrage, a large number of loyal, legal voters. There are now precincts in this Territory — and testimony has been borne to that fact by the gentleman from Storey, (Mr. Hovey) — where there are twelve or fifteen hundred voters, and the administration of that oath, if they were challenged, would necessarily occupy so much time, as to effectually exclude the ballots of a very large proportion of such voters. But while I objected to allowing the oath to remain in this section, I did not object to its incorporation in another place, where I conceived it would more effectually subserve its purpose; and it was for the purpose of explaining my views on that subject that I desired to address the Convention at the time I was decided to be out of order — though I believe the point was properly raised, and for that reason I did not avail myself of the courtesy offered by the Convention at that time of allowing me to continue my remarks. I conceived that the section which provides for a registry law, was the proper place in which to incorporate this test oath. Now, sir, I disagree with my friend from Humboldt (Mr. Dunne) in relation to the extent to which this provision would go. As I understand the resolution of instructions, as prepared by him, it provides that all men, when they make application for registration, shall take this test oath. If that would be attended with any corresponding benefit, I should have no objection, for, as other gentlemen have said, I am perfectly willing to take and subscribe to that oath as often as it becomes necessary to administer it. But is it necessary for this to be done? Is there any corresponding benefit to be obtained? On the contrary, is it not advisable that the oath should only be administered in case a person is challenged for disloyalty? I think all the practical benefit to be derived from a test oath can in that manner be secured. And, in accordance with this view, I have prepared an amendment, which I know meets with the approbation of several members of the Convention. I propose to amend the instructions, as offered by the gentleman from Humboldt, so as to read as follows:—

Amend Section 7, so as to incorporate the following, to wit:—

"*Provided*, That any person when making application to be registered as a voter, shall, upon being challenged on account of disloyalty, take and subscribe an oath or affirmation in the following form:—'I —— do solemnly swear [or affirm] that I will support, protect, and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution or law of any State Convention or Legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever. So help me God.'"

I have no serious objection to the amendment offered by the gentleman from Humboldt, but I think all the real benefits derivable from a test oath may be obtained by this provision, and then we can leave it within the province of the Legislature to prescribe the manner of making the challenge. They may, if they please, even make it the duty of the registering officers to challenge every man, and require him to take the test oath.

My friend from Storey (Mr. Frisell) has inveighed against the action of the Convention, in adopting a test oath, as being something unusual. I think the gentleman is mistaken in some of his objections. He is correct in this, however, that no oath of loyalty, in form or substance as now proposed, is found in the Constitution of any other State. But the reason of this is apparent. We are forming a Constitution under circumstances unlike those which have attended similar action in any other State of the Union, but I do not doubt that each and all of the loyal States would to-day, if it were in their power, incorporate in their Constitutions provisions of the like character, and they would do it, too, readily and cheerfully.

We find that in the Constitutions of other States, a form of oath is prescribed—a form which, under the circumstances attending the framing of their respective State Governments, was deemed to be sufficient—but this unholy rebellion has taught us an additional and instructive lesson on the subject of the sanctity and inviolability of oaths.

Mr. FRIZELL [interrupting.] Does the gentleman hold that the Legislature would not have the right, under our Constitution, without this provision, to pass a law prescribing the same oath which is here proposed?

Mr. JOHNSON. I will not attempt to say that they would not have the power to do it, but I want this matter unmistakably expressed. I do not want it to be a question in every Legislature in succeeding years, but let it be fixed and established in the Constitution, so that it cannot be revoked except by an amendment of that instrument. My sympathies and my judgment alike prompt me to favor the incorporation of that oath in the Constitution, and I think it is not transcending legitimate bounds to do so. If you refer to the Constitutions of other States you will find, almost invariably, a particular form of oath prescribed in each of those Constitutions. We are acting here, in this matter, only from the light of experience—the same rule which the gentleman from Storey himself lays down for his guidance. By this rebellion we have had demonstrated the necessity of prescribing something additional to that form of oath which has been found sufficient in the Constitutions of other States. I repeat, that I do not think it is necessary that every man who comes up to register his vote shall be compelled to take and subscribe that oath, but it is quite sufficient that he should be compelled to do so when challenged. That will guard most effectually the rights of loyal men, and will operate to the exclusion of the disloyal. With this exposition of my views, I submit my amendment of the instructions to the action of the Convention.

[The PRESIDENT in the Chair.]

Mr. DUNNE. I hope my position will not be misunderstood on this subject. After the remarks which have been made since this question was first raised in this Convention, unless some explanations were made by me, the inference might be a fair one that my amendment was prompted by a desire to legislate against a particular class. Now as the principle which governs me, upon this subject, is directly in opposition to anything of that kind, I am necessarily opposed to the last amendment which has been offered. If there is any one rule of action or principle which, more than another, I would like to see prevail in this Convention, it is that of calm, consistent reason and judgment. It was for that reason that I offered the resolution which I had the honor of presenting on my first arrival in this body, believing that it would be impossible at this time to obtain a vote upon the Constitution proposed to be submitted, which would be entirely free from party prejudices, or appeals to the passions of men. It was acting upon that principle that I felt it my duty to make the motion to strike out the word "disloyal" from the second section, as it stood in the Constitution framed by the last Convention, because I desired to see no invidious distinction made against a particular class. It was also upon that principle that I voted for the proposition that no person should be convicted of treason unless upon the testimony of two witnesses to the same overt act. In all my action in this Convention I have been prompted by the desire of maintaining that one important principle, of cool, sober judgment. And I conceive that the amendment proposed by the gentleman from Ormsby, (Mr. Johnson,) to these instructions, is in opposition to that principle. The resolution of instructions, without the amendment proposed, makes no invidious distinction against a class. It attempts to brand no one as an outlaw; it raises no suspicions as to the loyalty or disloyalty of any man; it only proposes a simple, broad principle of law, and it is directly opposed to the establishment of any particular distinction against any class. Its adoption will forever prevent the opponents of the State Government, or any person in the opposition, from charging upon this Convention, almost unanimously composed, as it is, of members of the dominant party in the country, that when it had the power of a giant it used that power like a giant. It would prevent any one from being able to say: "When you were in power, you attempted to brand us as outlaws, and to deprive us of one of the most glorious privileges of American freemen. You attempted to sink us down to the level of the negroes and Chinamen and the aboriginal inhabitants of the country. You attempted, by an odious act engrafted into the organic law of the State, to draw a distinction which should set us, as men, apart from our fellow-citizens here." For that reason it was that I asked one gentleman who has spoken on this subject, if he believed such action necessary at all, for securing the purity of the ballot-box. If it is necessary at all, then let it be generally applied to all, and let no one be able to say that it was directed against him particularly. Remember, that there are changes which all must expect in political life, and that the dominant party of to-day may be in a hopeless minority to-morrow. Remember, that as members of this Constitutional Convention, a body supposed to be composed of men possessed of calm reason and acting upon deliberate judgment, we are laying down only the broad, fundamental principles of law — a chart which is to endure for all time, and that we are expected to legislate for all men without distinction of party, or class, or creed. Remember, that it is your duty here, as I certainly conceive it to be my own, to make whatever laws we do make, entirely general in their application.

And now, to come to the principal point in

this matter; if gentlemen consider it necessary that this oath shall be inserted at all, then I say let it be effective, and let it be administered not only to those whose loyalty shall be questioned, but to every one else. Then, again, if you contemplate the appointment of a Registrar, there is, as I before stated, no fixed time at which men may apply for registration. No time is established, except that it must be before the election, and therefore men would have the right to make their applications at any time, perhaps three months before the election, and could take and subscribe their oaths if they were challenged. Now the only question is, is it necessary for any one to take this oath? Because, if it is, it is necessary for all; otherwise, gentlemen must see that many persons whose loyalty is undoubted, would be obliged to take the oath, while perhaps the very men for whom the provision is most required would escape. They would go to the office of the Registrar, and if they saw nobody there to challenge them they would give their names; but if they found some one ready to challenge them they would say they would drop in at another time, and in that way they would manage to avoid the necessity of taking the oath. Therefore I say if it is necessary at all, and I think it is, it should be made to apply to all, and consequently I hope this amendment will not prevail.

Mr. McCLINTON. I agree with the remarks of my friend from Humboldt, (Mr. Dunne,) and hope that this oath will be adopted. I do not desire that, before our institutions shall have become settled on a firm basis, a flood of voters shall be permitted to pour into this Territory, or State, from the States which are now in rebellion against the Government of the United States, to vote me down, and to vote you down, sir, and to vote down every other loyal man. I do not wish that the assassins of those men who are now bravely upholding the flag and the Government of the United States should be, by my vote at least, elevated to a political equality with myself.

I do not propose to make any lengthy remarks on this subject. It has been already too much discussed, and I desire to facilitate the business of the Convention as much as possible. I appreciate the merciful, forgiving spirit manifested by the gentleman from Storey, (Mr. Frizell,) and I will say to him that I, too, sometimes pray, but in this case, my prayer would happen to be one written by Robert Burns, and not by Alexander Pope. If I were to make a prayer in behalf of the rebels, I would say:—

"Thy strong right hand, Lord, mak' it bare
Upo' their heads:
Lord, weigh it down, and dinna spare,
For their misdeeds."

I hope that the oath proposed by the gentleman from Lyon (Mr. Kennedy) will be adopted; and I cannot, for my part, see the disadvantages to result from the adoption of that oath which some gentlemen on this floor appear to apprehend. I cannot see that it will prescribe any person who is willing to do what we have unequivocally a right to demand that he shall do, before enjoying the rights of citizenship in this State. All he is required to do, in order to register his name as a voter, is to subscribe to this oath; and it is a bad argument to say that it will work a hardship upon a man who is disloyal, and not upon a loyal man. If there are rebels among us who would object to taking the oath, I, for one, am in favor of compelling them to take it.

Mr. HAINES. This discussion has taken a very wide range, and I would like to know how the question now stands before the Convention. It appears to me that all the members are anxious to arrive at about the same end, only they differ widely as to the mode and manner of reaching that end.

The PRESIDENT. The question now is on the motion to recommit the article to a special committee, with instructions to add to the section providing for a registry law, the matters contained in the amendment of the gentleman from Humboldt (Mr. Dunne).

Mr. HAINES. The only difference I see between members is, as to whether or not all voters shall be obliged to take this oath; and although the motives of some gentlemen are directly impugned because they do not desire that all shall be compelled to take it, I cannot see that they are deserving of any censure on that score. For one, I should be in favor of having the Registrar compelled to administer the oath to all, and then there can be no possible misunderstanding; but a man who would fail or refuse to take it, would at once be known as disloyal, and, as a matter of course, he would be prevented from voting. Otherwise, some men would inevitably avoid being challenged, and the only advantage we should derive from the provision would be, that we might catch some disloyal men, by virtue of their being known, and challenge them. A disloyal man who came to the registry office might not be known to the Registrar, and it is very true, as has been remarked by some gentleman, that "what is everybody's business is nobody's business." In many instances, persons will not wish to make known their views, and sometimes men might hesitate, through fear or other motives, to challenge men of known disloyalty. I see no great inconvenience to result from the amendment, except to the Registrar himself; and the amount of extra work he would be called upon to perform on this account I do not think would be very great. What he would have to do would then be definite and certain, and he could do it very rapidly. I think that every loyal man would be, like my friend from Storey, (Mr. Collins,) willing, if necessary, to take the oath four times a day, in order to make it certain that no disloyal man should be registered without having taken it, and he would not mind the slight inconveni-

once and forever. I would like to see this matter settled in such a way that all who come to be registered, shall take and subscribe the oath, and pay their poll taxes; and I believe every loyal man would feel, in doing so, that he had strengthened the bond which attaches him to the National Government.

Mr. COLLINS. I agree with the eloquent gentleman from Esmeralda, (Mr. Mason,) that if I knew a man who was rabidly disloyal, or disloyal in the least, who would not take the oath, I should feel as if I wanted to make him take it; but the difference between the gentleman and myself is this: I regard this rebellion as ephemeral in its character and consequence. It is a thing of a day, while our Constitution is for all time in the future. I do not want to incorporate in the Constitution anything which is soon to be exhausted and die out of itself, leaving the constitutional provision wholly inoperative, and a dead letter.

Now, I have no objection at all to instructing the Legislature to prescribe such an oath with regard to loyalty to the Federal, or State Government, or both, as in its wisdom it may deem desirable. That may be a very proper thing for the Legislature to do, but it may be very improper for us to do. I would like it very well if, in every section of this State, a provision of law were enforced, requiring every challenged man, and, if necessary, every elector, to take this oath, so as to prevent, in accordance with the idea of the gentleman from Douglas, (Mr. Haines,) one single individual from escaping. But in one, two, three, or possibly four years, all this matter of disloyalty, I trust, will have subsided, and the necessity of any such action will have ceased to exist; and then I want the provision to cease also. Therefore, I say, give the Legislature instructions to pass such laws as are required, and let the Legislature require an oath to be taken when, where, and how it may be deemed best for the time being. I have no fear but that the Legislature, coming warm and fresh from the people from year to year, will be inspired with sentiments of loyalty and patriotism.

I am happy to find that I am in a body of men so thoroughly imbued with the spirit of loyalty, so devoted to their country, so generous to the government that they are unwilling that any man, unless fully purged from any taint of disloyalty, shall be allowed to exercise the elective franchise. That pleases me, I say; and I like, also, to be inspired by speeches, such as have been made here, so eloquent, and ardent and determined, in regard to loyalty. But we should bear in mind that we are legislating as unimpassioned men—that our judgment should be cool, calm, and clear, and that we should establish a Constitution under the influence alone of that calm and clear judgment. If gentlemen yield to, and allow themselves to be guided by, the influences around them which inspire them with enthusiasm and zeal, they will be incapacitated from exercising clear judgment. I do not want to be placed in that position. I say, let us cast aside all surroundings which inspire our hearts, influence our passions, or excite our feelings; let us be calm, and cool, and deliberate in the performance of our duties, and incorporate only that which ought to be permanent in our organic act.

Mr. BROSNAN. I have but a few words to say upon this section, and I need not say anything upon the matter, merely for the purpose of having my loyalty vouched for, or understood. I am not opposed to the spirit of the amendment, by any means, but I look upon this constitutional provision as being an instrument that will cut both ways. I perceive by the remarks of gentlemen who have preceded me, that they do not appear to agree among themselves, even with regard to the objects of the mover of the resolution. It seems that the learned gentlemen from Humboldt (Mr. Dunne,) who originally moved the resolution, desires that there shall be no discrimination, but that the provision shall be general in its application to every elector in the State, while most of those who have spoken in its favor seem to advocate it because it is calculated to exclude the very class which he says is obnoxious. For myself, Mr. President, in a body composed of such intelligent men as this is, when there seems to be so great a discrepancy between the idea of the mover and the idea of those in favor of the adoption of the motion, I have to say that "I fear the Greeks even bringing presents." It cannot be a sound proposition when we cannot all agree even upon the reasons of the mover, or when we approve of it for different reasons. That does not seem to me to afford a very flattering prospect. I would rather for myself prefer that this subject were entirely left to the Legislature; and if I vote against this resolution, it will be entirely and solely upon that ground.

We do not even derive a practical advantage from this provision, because it only applies to voters after we shall have become a State; and yet the most important and vital election which we are about to hold is the election which is to decide the question of the adoption of this Constitution, or its rejection; and then the first State election is to be held immediately succeeding its adoption, in the event that it is adopted. Yet at this time, when men's passions are excited, as we have seen they are, when we all feel a thrill of horror at the damnable insurrection which has deluged this land in blood, at this very period we are unable to give practical effect to this clause. And still we are seeking to make it operative at a time when the passions of men will have subsided, when the tumultuous waves of rebellion shall have recoiled and rolled back, when the Angel of Peace shall, with her trumpet, have sounded the notes of reconciliation and harmony. It is proposed, Mr. President, that when perhaps the

deep and bloody traces that have been left upon the heart of the nation by this damnable war shall have disappeared, when in future times these scars will seem perhaps but as the hieroglyphics which the boy in his play traces upon a barren beach, to be swept away by the first wave, or the first reflux of the tide, we should still have in our fundamental law, adopted for the government of this State, this trace and mark of a passionate spirit of revenge. I do not want to see it there.

Not only do I look upon it in that light, Mr. President, but I also object to the provision because you might with as much propriety, in my judgment—though in this I may be in error—prescribe all the duties of the registering officer, or the clerk who has to take the names, or the fees to be received for administering the oath, and all those other little matters of detail which you ought to leave to the Legislature of your State, if you ever have one. And with these minor duties and matters of detail to be prescribed by the Legislature, I would also leave the prescribing of this oath. Gentlemen will perceive by looking at Section 27 of Article IV, that laws are required to be made to exclude certain persons from serving on juries and from the right of suffrage. If this provision were proposed to be incorporated in that section, I should like it better than where you are placing it here, in connection with the general declaration of the privilege of the exercise of the elective franchise. It would be better to leave it so that the Legislature, when passing laws to exclude certain persons from serving on juries and prescribing the qualifications of electors, may, at the same time, establish this oath.

But, sir, I do not wish to detain the Convention with any extended remarks. My only object is to have my objection fairly understood, namely, that this is a proper subject for legislative action, and not at all proper, in my judgment, to be placed in this Constitution.

Mr. DeLONG. I disagree with my respected colleague (Mr. Brosnan) on the main ground of his argument in opposition to this measure. He speaks of it as being wrong to be placed in our Constitution, and as a monument of revenge against that which will be remembered in history only as a hieroglyphic which a boy has written in the sand. I do not think that this rebellion, or its memory, or its wrongs, or the injuries it has inflicted, will be wiped out by the first wave of peace and reconciliation, or even by the waves of peace that may flow over it for a century of time to come. I believe as confidently as my colleague may or can believe, that the strong arm of the Government will put down the rebellion which is now seeking to overthrow it. I believe that rebellion to be as accursed as he thinks it to be. I believe in all those things as strenuously as he does; but I do believe that when this rebellion shall have been crushed, rankling in the hearts of those who have been its aiders and abettors will long continue to exist that feeling of disaffection which will require the strongest guards and restraints for a long time to come, to be placed around those men, to protect the country against renewed treason and perjury. I do not think that this proposed section will stand as a monument of revenge or of folly, but rather as a monument of caution, which we have a right to exercise, in the future, from much as we have learned the bitter lesson which men refused at first to believe, that the best Government the world ever saw, millions of men could be found, who, without any cause, would enter into a conspiracy and bloody revolution to overthrow that Government and destroy the brightest hopes and happiness of their fellow-men. I believe that within a few years we shall see constitutional provisions framed and adopted in every State in the Union, and by the Federal Government itself, also, providing that every man who shall have raised an arm against our Government shall be regarded, beyond the possibility of a doubt, not only as a traitor, but as a double-dyed, damnable villain and perjurer. [Applause.] I want every man who proposes to exercise the right of suffrage among us not only to record his name, but, in the presence of Almighty God, to swear that oath, and so to seal his everlasting and eternal damnation if he ever again raises his hand in rebellion. I want to see this done, and I think this rebellion has justified it. If, heretofore, in the best regulated and most enlightened Government that has ever been founded in the world, malcontents can be found who would rather reign in hell than serve in heaven, men who at any time when they find that their prospects of elevation to power are impaired, would be glad to see the Republic dashed to ruin, if only they could stand paramount above that ruin, the highest of the high, then we may expect that such men will continue to be found in the future. Such men do live; they live now, and ever have lived in the history of the past, and such men will continue to live as long as Governments continue to exist on earth. I say, we cannot exercise too much caution against that class of men; and whilst I do not impugn or question the motives of gentlemen who differ in their views on this subject from those views which I entertain, I say that the man who refuses to subscribe to that oath, or does not desire to take it, is in my opinion tender-footed on the question of loyalty. I believe that no man who truly loves his Government, in whose heart is maintained the firm, fixed resolve that he will live with it and die with it, has any objection in the world to coming before a Registrar, and there, while recording himself a voter, subscribing to that oath of allegiance which binds him in his soul and in his actions for all time to come. I want it to stand there, hieroglyphic though it may be, not written in the sand, but written on parchment, in our State Constitution, a document which we ourselves subscribe

and read this, that all men must and shall subscribe to, before they become our peers and equals in the prerogatives which belong to freemen. And, sir, I hope that this Convention will adopt this oath and add it to that section, as a guarantee that we will not hereafter be met at the polls, and in the exercise of our sacred right of suffrage, be counterbalanced and nullified by those in whose veins runs no blood save that which is black as hell with the taint of treason. I hope the proposed amendment will be adopted.

Mr. HAWLEY. It would seem like presumption to add anything to the eloquent argument to which we have just listened. I presume that if there is any man on the floor, who, from his early associations, and from the ties which generally bind a man to the home of his youth, might be pardoned for a desire to extend a mistaken sympathy to those men who have sought to plunge the country into the ruin which now gapes and yawns at her feet, I am that man. Sir, I would rather perish by slow fire, or now, before that sun sets behind the western hills, be laid in a nameless grave, unknown to the dearest friend I have on earth, or even be forgotten by the mother who gave me birth, than I would again undergo the tempest of emotions through which I have arrived at those principles which are now the pole star of my existence. Born and reared amidst the influences of the accursed institution which is now being defended at the cost of the life-blood of the men who have established and built up that institution, it required years of absence from its unhallowed presence to teach me those lessons which, at length, I have learned. But when, at last, passion had died away—when early prejudices had been weeded out—I became convinced that I had been cherishing erroneous principles; and now I know that I am right. But this struggle has been going on in my breast from the time I first became old enough to think.

Now, sir, it does not become us, as men engaged in organizing a great State, to indulge in a spirit of revenge or passion, but rather, to look this matter calmly and dispassionately in the face. The question simply resolves itself into this: Shall we place in our organic law our emphatic, and, as long as this instrument shall remain, our enduring condemnation of the principle which gave birth to this rebellion? Shall it be said that we, meeting here to represent a loyal constituency, faltered in our duty, and pandered to that spirit of disaffection which exists in our midst, and which, for aught I know, may have its representatives—not, certainly, upon the floor of this Convention—but within the walls of the very building in which I am now speaking? Sir, I heartily indorse, and without mental reservation or purpose of evasion, the amendment which is now offered. I insist upon it, that it is the duty of this Convention to place in the organic law of the new State, a vow of loyalty, to which every man who may hereafter be called upon to exercise the functions of a freeman at the ballot-box, shall be required to subscribe. There is no middle ground. If we hesitate or delay, I believe, sir, we are lost. Facts have come to my knowledge since I came to this city as a member of this Convention, at the relation of which I have shuddered not less than when, for the first time, I learned that the hand of treason and rebellion had applied the spark to the cannon which sent the first ball against the walls of Sumter. I believe to-day, that not only in this Territory, but in the adjacent State of California—and not only in California, but in many a spot between here and the Missouri River—armed bands of rebels exist, who, upon the first occasion of a reverse—and such a thing may happen—are ready to apply the torch which shall lay in ashes our dwellings and our homes; to bring upon this land the unnumbered and unimaginable horrors which have reigned in that State from which more immediately I came.

Now, sir, this oath, if incorporated into our Constitution, we are told, will have no practical effect. These men now think they can plot in secret until the hour comes when they can work openly, and that if they must meet death, they may die with feet to the foe; but when they come to know that not death upon the battle-field, fighting for a mistaken idea, is to be their lot—but that instead, the felon's doom awaits them; that they are to drag out a ruined existence in chains, or in everlasting contempt—they will hesitate long before incurring such a punishment. More than that, they will learn that by persisting in a treasonable course, they are ostracising themselves; that they are placing a brand of suspicion upon themselves which will render them powerless for evil. Now, if we leave this matter open in our Constitution, prescribing no oath, but "taking the chances," to use a vulgarism, of the Legislature prescribing an oath which will be sufficiently binding, we may suddenly find ourselves bound hand and foot, or, at least, if not so bound, compelled to meet as foes upon the battle-field a class of men, every one of whom, for my part, I despise, as I do the filthy garbage of the gutter.

Sir, I do not see how an American citizen, even though born in the South, in a State which has declared itself separated from the United States, living in that section which has thrown thousands into the "imminent deadly breach," and sacrificed so many gallant lives—for a braver or more generous people than the Southern never lived, till they were tainted with this accursed heresy of treason—I can not see, I say, how an American citizen, although living in such a State, and amidst such associations, can so cling to the prejudices of the past as to even silently sympathize with that arch rebel who is now leading the hordes of treason against the Government, and to whom the language of the poet may well be applied:—

"Dejection shall strike him forlorn,
A mockery this name shall die;
The curse of hate, and the blame of scorn
Shall blacken the winds of his sky;
And proud o'er his ruin, forever be buried
The laughter of triumph, the jeers of the world."

Sir, if we are to render such men powerless for evil, we must circumscribe their actions, and subject them to scorn and contempt. It becomes us as men, in establishing the monument of a new State, to inscribe upon that monument our condemnation of the causes which have led to the present unhappy condition of our country. It becomes us as men, met here with an avowed purpose, to distinctly understand that it is within our province to strengthen the hands of the Federal Government, and not to leave our work half done, but, before we leave this hall, to place a capstone upon the edifice which we shall have erected, and place it there so firmly, too, that nothing but the sound of time's last trump shall cause its foundations to crumble, or its pillars to fall.

Mr. WARWICK. I confess that I have listened to the debate which has occupied the last two hours, with a very great degree of interest, nor can I conceive that the time has been wasted which has been devoted to the consideration of this, possibly the most important question which this Convention will have before it. And I certainly have been astonished, exceedingly astonished, at the ground taken by some gentlemen in their arguments, in asserting that the measure which we are proposing to incorporate into the organic law of the State of Nevada partakes of the character of an act of revenge, which shall stand as a monument of our imbecility, instead of a lasting and enduring monument of our wisdom. The amendment proposed is itself so worded, so amply guarded, that no individual, no Southern man, however tenacious he may be with regard to his rights, can find any fault with that particular section which we are here attempting to incorporate into our organic law.

Mr. DUNNE. Will the gentleman permit me to ask him a question? I would like to inquire if the gentleman, when he speaks of an amendment, understands that there is an amendment to an amendment proposed, and that the amendment now immediately before the Convention, contemplates making the distinction that only those who are challenged before the Registrar shall be required to take the oath?

Mr. WARWICK. Exactly; I understand the proposition perfectly, and I am opposed to that amendment, and in favor of the proposition that the oath shall be administered to every individual who shall come before the Registrar. I am in favor of that, for the reasons so ably given to the Convention by the gentleman from Humboldt himself (Mr. Dunne,) and so ably advocated, too, by the gentleman from Storey (Mr. DeLong,) and others who have spoken on this point. I am in favor of it for the reasons which the gentleman himself stated, that the time must come when the mantle of charity will be cast over the sins of the past, and when the sins of this rebellion shall be obliterated. I have no doubt that after a general amnesty shall have gone into effect, at the end of the rebellion, we shall forget that we have ever been aught but brothers. That day, however distant, must come, for the idea has never yet crossed my mind that there can exist two distinct and separate sections of the great American confederacy, living as neighbors, each under a different system of government, and with a different name from the other. I can only look forward to the day when we shall stand again as one great, united people; when we shall exist and be known as the United States of America, and when the accursed name of "Confederacy" shall be heard no more in the land. For that reason, sir, when this war shall have passed away, when this rebellion shall be no more heard of, I would have it said that this Convention, assembled while the clouds of war were still hovering over the land, to rear a young State, to add a new star to the glorious star-gemmed flag, was not forgetful of the coming peace, but placed those over whom the amnesty should throw its protecting ægis on an equality with other citizens, exacting no more from those who had been pardoned than those who had been loyal citizens from the first hour of the rebellion. If the respected gentleman from Storey (Mr. Collins,) can show me where there is any vengeance in this proposition, when I say that the man who has perhaps stricken down in this war a brother, a son, or a father, may be allowed to vote upon taking the same oath which I myself have to take—when I say to him, "Sir, I ask no more of you in registering your name as a voter than I myself concede to that Government which has protected me from childhood to manhood, and which will continue to protect me till I find rest in the grave,"—then I shall be ready to vote against this amendment. Where is the vengeance in that?

One gentleman has spoken as if those men who are in rebellion were committing the unpardonable sin, over which we never can throw the mantle of charity. He spoke as if we never would be willing to forgive them, and the cry went up of "Blood! blood! blood!" He seems to think that the blood they have shed in this war never can be washed out, no matter what the character of the sacrifice. Such is not, in my judgment, the proper view of the case. I have seen a disposition manifested here by other gentlemen—by the young gentleman from Lyon (Mr. Kennedy) more especially, and all who have advocated this proposition have referred to it—to look forward to the time when an amnesty will be in force, and when thereby this sin will be blotted out and no more known in the land. Now, sir, I hope the idea of requiring this test to be applied only to such as may be challenged, will not prevail, but that the amendment requiring ev-

ny man to take the oath when his name is registered, will be adopted. I hope that amendment, having due regard to the Amnesty Proclamation, will be incorporated in our organic act, even if it does carry with it the condemnation of treason forever and forever, as long as the Republic shall stand. Is the gentleman from Storey afraid that we should place the seal of our condemnation upon treason? Is it not enough, when the whole land has been made one vast scene of sacrifice, when the graves are still open, the blood flowing from a million of wounds, and the life of the Nation trembling in the balance, to justify us now, while we are on the point of rising into National existence, in stamping upon the charter of our coming liberty the fact that we do abhor and abominate treason? We propose to let the seal of our curse and condemnation stand upon it as long as these mountains around us shall continue to rear their heads towards heaven, and for one, I am not afraid to raise my voice, and to have my vote go upon the record of the proceedings of this Convention, in condemnation of treason. Though we may forgive the traitors, we never shall forgive nor cease to abhor their treason. Though the Amnesty may cover their sins, and they be blotted out and forgotten, still the treason is as accursed as ever. And future statesmen shall arise and point to the time in which we live, when that treason endangered the life of the Nation, when the Government itself was threatened by it to be blotted out, and the hope of coming millions wrenched forever. Then, I ask, shall we not now place our seal of condemnation upon that treason? I am at a loss to perceive where the argument of revenge can be made to apply, when we ask no more of the vilest traitor that ever shot down and murdered a patriot in cold blood, than we ourselves concede to the Government.

I can see a very serious objection to the amendment proposed by the gentleman from Ormsby, (Mr. Johnson,) leaving the section so as to apply only to those who may be challenged. In the first place, that would impose a most disagreeable duty upon the challenger, or if you make it the Registrar's duty, it imposes a disagreeable duty upon him, and a most weighty responsibility, also. I venture to say, sir, that there is no loyal man in this Convention, nor yet within the borders of this Territory, but will be willing to sacrifice so much as is required by this provision, if sacrifice it be, to require him once a year to pledge anew his fealty to the American Union. Now, suppose a case like this—and it is one likely to occur every day: Two men go before the Registrar a few days preceding the election to have their names recorded as voters. Both are equally known to the Registrar, and he is on friendly terms with both. He takes the name of the gentleman from Storey, (Mr. DeLong,) if you please, without any question, because he knows him to be thoroughly loyal. I then present myself, but he says, "No, sir; you cannot have your name registered unless you take this oath, because I believe you to be a traitor." It would be no more than his duty, I admit, if he believed that to be the case, but when you consider the manifold relations which we all occupy more or less, and necessarily so, with people who are of doubtful fidelity to the Government, with whom we are brought in contact in our daily affairs, I submit that this would impose upon a Registrar a most disagreeable duty, and an onerous task; whereas it would be no task at all if every man were required to take the oath. I, or my friend from Storey, can take the oath then, on equal terms, and any man who does not want to take it, can go away; and the man who may be unjustly accused of disloyalty, if he has no sympathy with treason, will thus have an opportunity to manifest that fact. But, sir, we know the tenacity with which all men cling to supposed rights. The Registrars would be overwhelmed with applications to challenge this, that, or the other man, and they would be abused frequently if they did not require certain men to take the oath.

I repeat that it is no hardship to any loyal man to take this oath. I do not believe that there is a member of this Convention here who would object to taking it if he were called upon at this time. Why, then, should we place upon any officer this onerous burden, this disagreeable task which would be likely to subject him to abuse a hundred times a day, when we can just as easily put this matter in such a shape that he need give offense to no man, and at the same time the provision will positively debar those who are not in sympathy with the Government from counterbalancing the votes of loyal men? I believe the gentleman from Storey (Mr. Collins) is actuated by as patriotic motives as any gentleman in this Convention, although I certainly do think it is an error of judgment on his part to suppose that a law can be made under the amendment to the amendment, which will be as efficient as it would be under the original instructions, which have been supported by nearly every gentleman in this body.

Mr. FITCH. The gentleman from Lander will pardon me for the interruption, but it is now only ten minutes before five o'clock, and we must have a vote soon, or not at all to-day. The gentleman has already exceeded the limit of fifteen minutes, I believe.

Mr. WARWICK. Oh, very well; I do not desire to trespass beyond my time, and I have said all I wished to say.

Mr. NOURSE. I shall vote against the amendment to the amendment, because I like the original proposition better.

The question was taken on the amendment to the instructions proposed by Mr. Johnson, and it was not agreed to.

The question recurred upon the instructions proposed by Mr. Dunne.

Mr. FITCH. If we carry this matter over till to-morrow, we shall be likely to fritter away another day before it is finally adjusted. I hope we shall instruct the committee to report something immediately.

Mr. MURDOCK. If a further amendment is in order now, I think that one should be made. I think I can see that instances might arise where this section, as proposed to be amended, would work a hardship, at least in certain communities. In Virginia City, probably there would be no trouble about registering the names; but I would like to have the section so amended that the Tax Collectors or their deputies might be provided with the form of oath, and the papers necessary, so that men might have their names registered at the same time they pay their taxes.

The PRESIDENT. This proposition would not inhibit the Legislature from providing for that course; it only requires that the oath shall be taken, and leaves the mode and manner to be regulated by the Legislature.

Mr. MURDOCK. Very well; I most heartily concur.

The question was taken on the motion of Mr. Dunne, to recommit with the instructions proposed by him, and it was agreed to.

The PRESIDENT appointed as the special committee, under the motion, Messrs. Kennedy, Dunne, and Brosnan.

Mr. BROSNAN. It is not the usual parliamentary course, I believe, to place upon the committee to which a measure is referred, a member who is opposed to that measure. But I wish to say, however, that I am not opposed to this proposition, and I will therefore serve on the committee.

Mr. CHAPIN gave notice that the Committee on the great Seal of Nevada would meet this evening.

The hour of five o'clock having arrived, the President, under the rule, declared the Convention adjourned.

NINTH DAY.

CARSON, July 13, 1864.

MORNING SESSION.

The Convention met at nine o'clock, and was called to order by the President.

The roll was called and all the members responded except the following: Messrs. Ball, Crawford, Fitch, Folsom, Gibson, Haines, Jones, Morse, Sturtevant, Wellington, and Williams. Present, 28; absent, 11.

On motion of Mr. HAWLEY, leave of absence was granted indefinitely to Mr. Haines.

On motion of Mr. HOVEY, leave of absence was granted indefinitely to Mr. Frisell.

Prayer was offered by the Rev. Mr. RILEY.

The journal of Saturday was read, corrected, and approved.

PACIFIC RAILROAD.

The SECRETARY stated (by leave of the Convention) that on Monday some member of the Convention had given notice of an amendment to Article VIII, entitled Municipal and other Corporations, and that in consequence of that proposed amendment he had directed the assistant Secretary to suspend the engrossing of the article. The amendment referred to was to Section 9, in relation to the Pacific Railroad.

Mr. DeLONG. That is the old bone.

Mr. WARWICK. I think I was the one who gave notice at that time that I should make a motion to amend so as to raise the rate of interest on these bonds from seven to ten per cent, but I thought that matter had been disposed of and decided by the Convention. The question was very ably argued, I remember, by the President, and I was under the impression that the Convention took action immediately, retaining the lower rate of interest. If, however, the subject is still open, I should be very happy to have the clause amended, and at the proper time I shall be glad of an opportunity to say a few words in regard to the propriety of raising that rate of interest.

The PRESIDENT. It would not be in order at the present time. Reports of committees are the present order of business.

RIGHT OF SUFFRAGE — THE VOTER'S OATH.

Mr. KENNEDY, from the special committee to whom was referred Article II, entitled Right of Suffrage, with instructions to amend Section 1, reported as follows:—

Your committee to which was recommitted Article II, entitled Right of Suffrage, with instructions to amend Section 1, by inserting the oath stricken out of Section 2, or to draft an oath proper for that purpose and report the same to the Convention, respectfully submit the following proviso as an addition to Section 1:—

"*Provided*, That no person shall have his name registered as an elector until he shall take and subscribe the following oath or affirmation before an officer authorized by law:—'I ——, do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution or law of any State Convention or Legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever, so help me God.'"

All of which is respectfully submitted.

F. H. KENNEDY, *Chairman*.

Mr. BANKS. I move the adoption of that report.

Mr. DUNNE. In the ordinary course of business, I believe, this report would go to the general file, but I should like to suspend the rules and take it up now.

The PRESIDENT. I suppose it is competent for the Convention to consider the report now, under the rules.

Mr. BANKS. I hope any question of order in regard to it will be waived, and let us de-

...ake the matter now, as it has already been fully debated.

Mr. LOCKWOOD. I listened to a long debate on this question yesterday, and I should, myself, like to make a very few remarks upon it at this time, merely for the sake of gaining some information, because I wish to vote intelligently. Sir, if I understand the object of a declaration of voters, it is to provide the means of preventing men who are not qualified electors, under the laws, from exercising the right of the elective franchise. Now, by referring to Section 2 of this article, gentlemen will find that we have this provision:—

"Sec. 2. No person who has been or may be convicted of treason or felony, in any State or Territory of the United States, unless restored to civil rights, and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government, and no idiot or insane person, shall be entitled to the privilege of an elector.

Already we have provided that no such person as is here described shall be allowed to exercise this right of suffrage. I start out, sir, with the assumption that one duty, and, I presume, about the only duty, of the Registrar, will be to find out, by some proper means, who are, and who are not, qualified electors.

Mr. McCLINTON. I want to correct the gentleman, with his permission, in one respect. I think that section which he has read, and which has met with general approval by the Convention, says that such men shall not vote "unless a general amnesty be granted by the United States," or words to that effect.

Mr. LOCKWOOD. I understand all that; but this article goes further, in another part. It says in Section 8, as we have it before us in the printed basis:—

"Provision shall be made by law for the registration of the names of the electors within the county of which they may be residents, and for the ascertainment, by proper proofs, of the persons who shall be entitled to the right of suffrage, as hereby established."

Now, who is to ascertain this, by proper proofs? Why, the Registrar. I submit to the Convention, that if a man comes before that officer to have his name registered, and the officer says to him—"Sir, hold up your hand and swear whether or not you have ever borne arms against the Federal Government, or held office under the so-called Confederate States,"—if the man refuses to take that oath, the Registrar must, in the exercise of the functions of his office, even in accordance with the sections I have read, refuse to receive his name. He would have no right to register the name of such a man as a qualified elector. Therefore, I say, while I would be willing, if necessary, to prescribe the very strictest form of oath—because I start out with the presumption that we are in favor of allowing no man to exercise the elective franchise, who feels that it is his bounden duty to do all he can to overthrow the Government, whether of the State or Nation, for that would be a suicidal policy—yet it seems to me that we are not called upon to prescribe any oath at all, in this instrument. It is, of course, the province of the Legislature to prescribe the duties of the Registrar; and it does seem to me—although I am not a lawyer, and do not wish to set up my opinions in opposition to those of abler men in this Convention—that if the Registrar has any legitimate duty at all to perform, that duty is marked out, or, at least, intimated, in this Section 2. I submit this suggestion to the consideration of the Convention, and would be glad to hear the opinions of gentlemen who know more about matters of this sort than I do.

Mr. DeLONG. Does the gentleman from Ormsby think that this Section 2, which he has read, authorizes the Registrar to require any man to take the oath?

Mr. LOCKWOOD. I submit that the language of the section is plain. It says that no person who has been guilty of any of these things which are specified, shall be entitled to the privileges of an elector; and the very object of having a registry of votes is, to find out, before the day of election, who are electors, in order that the proceedings, on election day, may not be interrupted and delayed, by any questions involving the right to exercise the elective franchise.

Mr. DeLONG. But there is nothing in the section to authorise the Registrar to require the oath to be taken by any man. There is nothing in it about the Registrar; and it would be looked upon as a usurpation of power on his part to require it. But, by requiring every man to take the oath, we relieve the officer from the responsibility, and at the same time we shut out disloyal men from the exercise of the elective franchise.

Mr. LOCKWOOD. Neither is there anything in the Constitution to make it the duty of the Governor to veto a bill. It seems clear to me, that as the Registrar has certain duties to perform, and as the only object in having a Registrar at all is, that he shall ascertain, by proper proofs, who are legal voters, this power and duty may be inferred. I consider that it would be as much his duty, when a person applies to be registered, to find out, by proper proofs, whether he has been in the service, milliary or otherwise, of the so-called Confederate States, as it would be to find out, by proper proofs, whether or not he is a resident, and has been six months in the State, and thirty days in the district. It is left for the Legislature to prescribe the duties of the Registrar, and therefore I consider this oath out of place in the Constitution. I am willing to leave it entirely to the Legislature to say by what means the Registrar shall ascertain whether a man is, or is not, a properly qualified elector, before registering his name.

Mr. DUNN. I understand the matter in this light: Section 2 specifies certain classes of persons who shall not be allowed the privilege

of voting, and it is the business of the Legislature, under the restriction laid down here in the Constitution, to put that provision into operation. Then, after the classes of persons who are allowed to vote have been defined, the subsequent section goes still further, as amended, and says that, before those persons shall vote, they must be required to take this additional oath.

Mr. STURTEVANT. As I understand it, the great reason, or one of the principal reasons for registering the names of the voters, is for the purpose of gathering the poll-tax. It is a financial scheme. It may be provided that a man shall not be registered except upon the payment of his poll-tax.

The PRESIDENT. No provision of that kind has been incorporated into the Constitution, but there is a provision making it discretionary with the Legislature to pass a law providing that the payment of a poll-tax shall be a condition precedent to the right of voting. The Legislature, however, may pass such a law, or it may not.

Mr. STURTEVANT. If that is not the object, so far as I am concerned, I would as soon as not see this oath stricken out.

Mr. LOCKWOOD. Now I still persist in my proposition.

Mr. BANKS. Will the gentleman state it again, briefly?

Mr. LOCKWOOD. I will state it as briefly as I can, but I did not take a part in the discussion of yesterday, and I think I might be allowed to occupy a few moments, if necessary.

Mr. BANKS. The gentleman misunderstood me. I did not mean to ask him to be brief on account of time; what I want is a clear understanding. I think the gentleman sees a difficulty, which can be briefly stated, and perhaps explained away.

Mr. LOCKWOOD. I say that the object of having a registry, I think, is to ascertain who are the electors.

Mr. BANKS. Yes, sir.

Mr. LOCKWOOD. And to ascertain that, previous to the day of election.

Mr. BANKS. Yes, sir.

Mr. WARWICK. I hope the gentleman from Humboldt will not interrupt with his interjections. [Laughter.]

Mr. LOCKWOOD. I hold that it must be the duty of the Registrar to examine any applicant, before registering his name, relative to his qualifications as a voter; and among those qualifications, the applicant must show, by some means or other, to the satisfaction of the Registrar, that he has never borne arms against the Government, or held office, either civil or military, under the so-called Confederate States. Now, sir, my proposition is this: that if you are going to prescribe any oath, you should insert in it the other disqualifications, also. It is as much the duty of the Registrar to require a man to swear that he has not so borne arms, or held office under the so-called Confederate States, as it is to ascertain by absolute proof that he is a resident of the State, and has been a resident of the district or county long enough to make him a qualified elector.

Mr. BANKS. I think I sufficiently understand the proposition of the gentleman, and my answer to it is this: Section 2, of Article II, provides that persons guilty of treason against the United States, unless restored to civil rights, shall not have the privilege of voting. That is the declaration of the Constitution; but we do not propose to prescribe any oath in regard to that. We propose that the Legislature may pass such laws as will enable the officers to determine whether a man has been guilty of treason or not, or whether he has been pardoned under the Amnesty Proclamation or not. So far as the past is concerned, we propose to leave it, with the machinery, oaths and all, to the Legislature—to the statutes to be passed by the Legislature. Then, coming to the section which we are considering now, we provide that, so far as future acts are concerned, we will require every man who comes forward to be registered, to take the oath which has been read. That, I understand, is the whole scheme. As it regards the past, we leave it to the Legislature; and as regards the future, we prescribe an oath, to be taken by all. And I wish to say here, in reply to the long and able arguments against this provision, to which we listened yesterday, only this: that we do not propose to do anything in the nature of revenge; we simply provide for protection against treason in the future.

Mr. LOCKWOOD. I wish to ask one question: Suppose a man comes before the Registrar and asks to have his name registered, does not the gentleman from Humboldt think that it would be the duty of the Registrar, under Section 2, to ask him if he ever held office under the so-called Confederate States; I mean if there were no provision made on the subject by the Legislature?

Mr. BANKS. I will endeavor to answer that question. It involves a point which was very ably considered by Justice Sanderson, of the Supreme Court of California, in a decision which most of the gentlemen present have probably read. This is one of those sections of the Constitution which, like the other section to which I have referred, is not self-enforcing. It requires legislative action to provide the machinery by which the matter shall be determined. That is, the questions in regard to a party coming up to vote—Is he entitled to vote or not? Has he been guilty of treason or not? &c.—must be determined by the agency created by the Legislature. This section is not self-enforcing.

Mr. HOVEY. I think I see some difficulty in the way, myself. I will offer an amendment to meet it.

Mr. DUNNE. I think an amendment is not in order.

Mr. HOVEY. Perhaps it may not be in

ment, and I will only suggest it, and ask to have it read for information.

The SECRETARY read, as follows:

"And after the oath, the words, *Provided*, that the Legislature may, by law, prescribe such further oath as they may deem proper."

The question was taken on adopting the report of the special committee, amending Article II, and it was agreed to.

Mr. CRAWFORD. I suggest the propriety of reading the whole article, as amended, so that we can all understand it.

The article was read by the Secretary.

THE SOLDIERS' VOTE.

Mr. BROSNAN. I think there is some little ambiguity in the reading of Section 4, as it has been amended.

The PRESIDENT. There seems to be another objection to the language here employed, if the Convention will permit a suggestion from the Chair. Under the operation of this Constitution, it is proposed that the votes of soldiers shall be made to apply to the counties in which such soldiers were recruited; but men who are severally residents of three or four different counties may all be enlisted in one county; and according to the language of this section, their votes might be made to apply to that county, although some of them would be legality residents, and might claim the right to vote in other counties. They are declared to be voters in the counties in which they were enlisted, although they do not lose residence in the counties in which they had been living before they were so enlisted.

Mr. DUNNE. I think it is eminently proper that the votes should be applied to the counties in which the soldiers are recruited, for the reason that the only difficulty would be to know where the soldier was from. It would lead to endless disputes if it were necessary to determine where the residences of all the men were at the time of their enlistment, while the records would be available, and would be competent evidence to show where each man was enlisted. Another point is this: that if one county offers superior bounties to lead men to come from other counties and enlist, I think, in the way of reward to such a county for displaying greater liberality than is shown by other counties, it should have the advantage of the votes of the soldiers recruited within its limits.

Mr. McCLINTON. There would be a difficulty in the way of allowing soldiers to vote in the counties in which they are recruited, and I think there should be a constitutional provision to prohibit them from voting except where they are residents. A person might go from this county to Storey County and enlist, who had never been in Storey County before the day of his enlistment, or but a day or two before. Under the provisions of the Constitution, as found in Section 1 of this Article, if he had not enlisted, he could not vote there, because he would not have acquired a residence by having lived there thirty days. Now, as there have been some objections made to the words here used, providing that the soldiers' vote shall apply to the county in which he was recruited, I think I can obviate such objection by this amendment which I now offer. I move to amend Section 4 by striking out all after the word "county," and inserting instead the words, "and townships of which said voters are *bona fide* residents at the time of their enlistment."

The PRESIDENT. The amendment can only be made by unanimous consent.

Mr. McCLINTON. I hope there will be no objection. My object in inserting the word "township," is this: the office of Justice of the Peace is one of the most important of all the county offices in any county, and it is just as important that we should have the votes of our enlisted soldiers in the election of Justices of the Peace, as it is in filling the office of the Sheriff of the county, the County Clerk, or any other county officer. In reality it is an office of greater interest and importance to the people, the security of their rights often depending more upon the election of a good Justice of the Peace than upon a good Sheriff; and unless the soldier is allowed to vote in the township in which at the time of his enlistment he resided, of which he was then a *bona fide* resident, he could not vote at all for a Justice of the Peace.

Mr. CROSMAN. It looks to me as if there would be a difficulty in the way of making this part of the section practically operative, if you make any material change in the language as it has been read. As has already been remarked, the only means of knowing where the soldiers came from is, by referring to the records made by their superior officers, at the place of rendezvous. If we attempt to change the language so as to apply the votes of the soldiers to their several places of residence, rather than to the places where they were recruited, very frequently there will be no such evidence to produce, and the provision would, therefore, be inoperative. Although there might be a few cases in which men would be allowed to vote in Storey County, for instance, who had gone there from this, or some other county, to enlist, yet I see no other way of making this provision operative.

Mr. PROCTOR. I desire to make one remark, and I speak from experience. In regard to this matter of enlistments, I presume that the practice is about the same now, as it used to be when I was in Uncle Sam's service. When a recruit is enlisted, the first questions asked him are as to his name, age, and residence, and those matters are recorded on the enlistment-roll. That is the case with every soldier in the army of the United States. The recruit gives his name, age, height, complexion, residence, &c., and it is all placed on record. I have seen, in the city of Mexico, men discharged from the army, who were residents of Kentucky at the time of their enlistment, and who, after their discharge, received mileage to their places of

residence. You will find no more difficulty in learning the residence of a soldier from the records, than you will in finding there the place where he was enlisted, and, possibly, not so much.

Mr. DUNNE. If that is so, let us make this amendment. That is the view I take of it.

Mr. CROSMAN. I certainly would desire to have the vote of each man apply where it really belongs.

Mr. McCLINTON. The amendment provides that the soldier may vote in the county and township of which he is a *bona fide* voter at the time of the election.

The amendment offered by Mr. McClinton was adopted by unanimous consent.

POLL TAX.

Mr. BROSNAN. I notice that in Section 8—or Section 9, as it is numbered in this printed copy—the language is: "The Legislature shall provide by law for the payment of an annual poll-tax, of not less than two, nor exceeding four dollars, from each male person resident," etc. I think it should read, "by each male person."

Mr. STURTEVANT. It really looks to me rather like crowding the mourners, to make a man who is sixty years old, pay a poll-tax. I should think there would be no objection to making that fifty years, instead of sixty years.

Mr. LOCKWOOD. I suggest that we should insert the words "able-bodied" before the word "male." I think if a man is sick, he should not be required to pay a poll-tax.

Mr. CHAPIN. Then we should have an awful set of sick people in the country.

Mr. DeLONG. It would certainly prevent immigration, on account of the great number of people among us who would be in ill health. [Laughter.]

The PRESIDENT. The Chair understood the gentlemen from Storey (Mr. Brosman) to move a verbal alteration.

Mr. BROSNAN. Yes, sir; I will move to substitute the word "by," for the word "from," so as to read, "by each male person," etc.

Mr. TOZER. I object. "From" is just as good a word as "by."

Mr. DeLONG. We had better leave that whole matter to the Committee on Phraseology.

Mr. LOCKWOOD. I merely threw out a suggestion that it would be well to exempt sick persons, because I knew I could not get the amendment in without unanimous consent. If any member objects, I will not offer an amendment.

Mr. KENNEDY. I object.

The article as amended was again read, as follows:—

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION 1. Every white male citizen of the United States (not laboring under the disabilities named in this Constitution,) of the age of twenty-one years and upwards, who shall have actually resided in the State six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now are or hereafter may be elected by the people, and upon all questions submitted to the electors at such election.

SEC. 2. No person who has been or may be convicted of treason or felony in any State or Territory of the United States, unless restored to civil rights, and no person, who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless amnesty be granted to such by the Federal Government, and no idiot, or insane person, shall be entitled to the privilege of an elector.

SEC. 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

SEC. 4. The right of suffrage shall be enjoyed by all persons otherwise entitled to the same, who may be absent from this State in the military or naval service of the United States; *provided*, the votes so cast for officers shall be made to apply to the county and township of which said voters were *bona fide* residents at the time of their enlistment; and *provided*, that the payment of a poll-tax, or a registration of such a voter, shall not be required as a condition to the right of voting. Provision shall be made by law, regulating the manner of voting, holding elections, and making returns of such elections, wherein other provisions are not contained in this Constitution.

SEC. 5. During the day on which any general election shall be held in this State, no qualified elector shall be arrested by virtue of any civil process.

SEC. 6. All elections by the people, shall be by ballot; and all elections by the Legislature, or by either branch thereof, shall be *viva voce*.

SEC. 7. Provision shall be made by law for the registration of the names of the electors within the counties of which they may be residents, and for the ascertainment, by proper proofs, of the persons who shall be entitled to the right of suffrage, as hereby established; to preserve the purity of elections, and to regulate the manner of holding, and making returns of the same: *provided*, that no person shall have his name registered as an elector until he shall take and subscribe to the following oath or affirmation, before an officer authorized by law:—

I ——, do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any State Convention or Legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever, so help me God.

SEC. 8. The Legislature shall provide by law for the payment of an annual poll-tax of not less than two nor exceeding four dollars, from each male person resident in the State, between the ages of twenty-one and sixty years, (uncivilized American Indians excepted) one-half to be applied for State, and one-half for county purposes; and the Legislature may, in its discretion, make such payment a condition of the right of voting.

SEC. 9. All persons qualified by law to vote for Representatives to the General Assembly of the Territory of Nevada, on the 21st day of March, 1864, and all other persons who may be lawful voters in said Territory on the first Wednesday of September next following, shall be entitled to vote directly upon the question of adopting or rejecting this Constitution.

There being no further amendment, the question was taken by yeas and nays, on the final

...ence of the article, and the vote resulted—ayes, 18; noes, 1—as follows:—

...Messrs. Banks, Bobbs, Brady, Bronson, Chapman, Crawford, Crosman, DeLong, Dunne, Fitch, Fitzpatrick, Hoover, Hovey, Hudson, Kennedy, Kinsell, Lockwood, Mason, McClinton, Parker, Stephenson, Thompson, Tozer, Warwick, Wetherell, and Mr. President—18.

...Mr. Fenton—1.

So the article was passed.

Mr. HOVEY. With the consent of the Convention, I should like to explain my vote. I have voted in the affirmative, but I still see the same difficulty which the gentleman from Storey (Mr. Lockwood) has predicted to arise from prescribing this oath in the Constitution.

ADDITIONAL COMPENSATION.

Mr. DUNNE offered the following resolution:—

Resolved, That the officers of this Convention be allowed an additional one half day's salary for each evening session of this Convention attended by them.

Mr. DeLONG. I think they will have good luck to get one day's salary.

Mr. FITCH. I move that the resolution be laid upon the table.

Mr. DUNNE. I think I have the floor.

Mr. FITCH. I withdraw the motion.

Mr. DUNNE. I think that resolution ought to pass. If there was any reason for allowing these officers a salary in the first place, then, after having required them to perform additional labors, the same reasons must apply in favor of the passage of this resolution to pay them for such additional labors. They should certainly be paid for their labor, and if we resolve that they shall perform extraordinay labors, we should at least give them a chance of obtaining additional compensation.

Mr. WARWICK. I move to amend the resolution by inserting after the word "officers," the words "and privates." [Laughter.]

The PRESIDENT. The amendment of the gentleman from Lander is out of order.

Mr. WARWICK. So I supposed.

Mr. FITCH. I renew my motion to lay the resolution on the table.

The question was taken on the motion to lay the resolution on the table, and upon a division, it was not agreed to—ayes, 8; noes, 19.

Mr. FITCH. I trust gentlemen will consider that the people, and particularly the press of this Territory, are watching us with very sharp eyes, and any little matter of this kind that tends to increase the possible expenses of a State Government, even if it does not amount to more than twenty-five dollars, will be met with an outcry. It amounts to but little, I know, but I think that the question whether or not our officers will get any salary at all is extremely problematical. If the members of the Convention are patriotic enough to come here and work for nothing, it seems to me the officers might afford to work evenings upon a full salary.

Mr. DUNNE. As to the amount of work, it makes no difference whether we do our work up in a fortnight by working nights, or take a longer time for it without any night sessions. The same amount of labor is to be gone through with in either case, and the same amount of work is to be done by the officers of the Convention.

Mr. FITCH. That is true; but if we create any extra expense, the advocates of the State Government will be attacked for it.

Mr. DUNNE. I dislike to see everything made to turn upon the question of how it is going to affect the adoption of the Constitution.

Mr. FITCH. Well, that is just the point where the gentleman and I differ.

Mr. DeLONG. I do not think there is more than one newspaper in the Territory that is disposed to pick up such little matters, and that is the *Washoe Herald*.

Mr. FITCH. The *Washoe Herald* is the only paper in Storey County that has as yet taken ground in favor of a State Government. I say that these little things will be picked up by our opponents and used against the adoption of the Constitution. Now, I entirely agree with the views of the gentleman from Humboldt (Mr. Dunne,) in regard to this matter, but the difference, and the only difference between us is, that he is not disposed to favor the adoption of the Constitution, while I am decidedly in favor of its adoption.

Mr. DUNNE. Now I rise to a question of privilege. I call upon any gentleman of the Convention to point to a single amendment I have offered to the basis which we have adopted here, that can in any sense whatever be construed as calculated to render the Constitution odious to the people. Every amendment I have made or offered in this Convention, if examined, I am satisfied will show for itself that it was intended to render the Constitution as little objectionable as possible, in case it should be adopted by the people. That is one reason why I came here. I feared that the Constitution would be adopted, and I came here for the purpose, if possible, of preventing its being framed in such a way as to be a great burden upon the people. If it is to be adopted, I want it as little burdensome as possible. Now, if the gentleman will allow me, jocosely, to offer an amendment, it will be thus: Inasmuch as he admits the justice of the resolution, and that those officers should be paid for their extra labor—

Mr. FITCH (interrupting.) I do not admit that.

Mr. DUNNE. I was going to say, that as he is afraid if we pass this resolution it will make votes against the Constitution, I would suggest that them earnest friends of the Constitution, themselves, pay the officers for their extra services.

Mr. WARWICK. That would be a rather serious joke, I should say.

The PRESIDENT. If the gentleman offers

that as an amendment, the Chair rules it out of order. [Laughter.]

Mr. STURTEVANT. I am in favor of this resolution, and I think the objection to it of the gentleman from Stevey is more humbug. Whatever we recommend the Legislature to appropriate for the pay of our officers, will undoubtedly be appropriated, whether the Constitution shall be adopted or not. That will make no sort of difference. Let the people vote "Constitution—Yes," or "Constitution—No?"; the stockholders will get their pay all the same. Now, I do not like to compel men to labor without paying them for it, but there is one other thing which I do not like, and that is the enormous amount of these extra bills. I had the pleasure, last winter, of examining bills to the amount of some twenty-seven thousand dollars, consisting of charges made against the other Convention, all of which were passed upon.

Mr. BROWNAN. Twenty-seven thousand? You mean twenty-seven hundred dollars, do you not?

Mr. STURTEVANT. No, sir; twenty-seven thousand dollars, and a little over.

Mr. CRAWFORD. I hope this resolution will pass. I see no reason why we should employ men here without paying them. If gentlemen are willing to spend their own nights here gratuitously, very well; but that is no reason why we should not render to Cæsar the things which are Cæsar's—no reason why we should not secure a fair payment for the services of those gentlemen who are employed by us. If gentlemen here from the mining districts should secure the services of miners to work in their mines during the night time, they would find it a very poor plea indeed, that because they themselves worked voluntarily during the night, therefore they should not pay their employees for their services.

Mr. FITCH. Did the gentleman ever know a legislative body that paid its clerks and employees extra pay beyond the regular salaries, for night sessions? I do not know of such an instance, and I know the Legislature of California never did it.

Mr. CRAWFORD. Have they never given their clerks and employees extra pay?

Mr. FITCH. Never for working at night.

The question was taken upon the adoption of the resolution, and upon a division, it was adopted—ayes, 19; noes, 5.

Mr. FITCH. I change my vote from no to aye, and give notice of a motion to reconsider.

THE RESOLUTION TO ADJOURN WITHOUT DAY.

Mr. DUNNE. I move that the resolution relating to the adjournment of this Convention sine die, offered on the sixth instant, be taken from the table and made the special order for Saturday next, at half-past seven o'clock, P. M.

Mr. DeLONG. I call for the reading of the resolution.

The SECRETARY read the preamble and resolution.

Mr. BROWNAN. I move that the motion of the gentleman from Humboldt be laid on the table.

Mr. DUNNE. I call for the yeas and nays.

Mr. BANKS. I rise to a point of order. The motion is to take a subject from the table, and a motion cannot be made to lay that motion on the table.

The PRESIDENT, after some discussion, overruled the point of order, and stated the question on Mr. Brownan's motion to lay Mr. Dunne's motion on the table.

Mr. BANKS. I do not make any appeal.

Mr. DUNNE. I would like to have the yeas and nays.

Messrs. HOVEY and TOZER seconded the call for the yeas and nays.

The question was taken by yeas and nays, and the vote resulted—yeas, 21; nays, 7—as follows:—

Yeas—Messrs. Banks, Beikes, Brady, Brownan, Chapman, Collins, Crawford, Crouch, Earl, Fritch, Freeman, Hovey, Hudson, Kenesty, Lockwood, Master, Pulliam, Proctor, Tuttlebee, Tuson, and Wellock—21.

Nays—Messrs. DeLong, Dunne, Fitch, Kleinsorge, Sturtevant, Warwick, and Mr. President—7.

So the motion was laid on the table.

LEGISLATIVE DEPARTMENT.

On motion of Mr. TOZER, the Convention resolved itself into Committee of the Whole, (the President remaining in the Chair,) for the further consideration of Article IV, entitled Legislative Department, which had been recommitted to the Committee of the Whole, with special instructions.

IN COMMITTEE OF THE WHOLE.

Mr. BANKS. I ask for the reading of the instructions of the Convention.

The SECRETARY. The article was recommitted to the Committee of the Whole, with instructions to amend Section 3, by striking out the words "Tuesday next after the first Monday in November," and inserting instead, the words "first Wednesday in September;" also, by adding the words "except as hereinafter provided;" so that the section would read—

SEC. 3. The members of the Assembly shall be chosen biennially by the qualified electors of their respective districts, on the first Wednesday in September, and their term of office shall be two years from the day next after their election, except as hereinafter provided.

Mr. DUNNE. I move that the Secretary make the amendments, in conformity with the instructions of the Convention.

Mr. STURTEVANT. I understand that the Committee is acting under special instructions, but I wish to call attention to the time fixed for the election in this section. I think we ought to fix our election on the same day as the election in California, in order to prevent "colonizing" or "strikes," from there here, or vice versa.

Mr. DUNNE. We can bring that matter up in the Convention, if we please, but not here.

Mr. STURTEVANT. Then what was the use of referring it to the Committee of the Whole?

The question was taken on the motion of Mr. Dunne, to instruct the Secretary to make the amendments, and it was agreed to.

Mr. KENNEDY. I would inquire if that section covers the first election?

The PRESIDENT. I understood that it was expected to be necessary to frame another section to cover the year of the Presidential election, and that that was the reason for incorporating the words, "except as hereinafter provided."

Mr. FITCH. I move that the Committee rise, and report the article back to the Convention, with the amendments.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration article IV, entitled Legislative Department, and had amended the same in accordance with the instructions of the Convention.

Mr. DeLONG. Under the rules, the article now goes, I believe, to the general file, unless by a suspension of the rules we take it up, and pass it now. I would have no objection to the further consideration of the article at this time, but I have an objection to passing it as it stands, and I want an opportunity to refer it to the Committee of the Whole, with other special instructions. We now have it in our possession, but under the rules it must go to the general file. I do not wish to take advantage of that circumstance, in order to make the motion which I wish to make, and I dislike to object to suspending the rules; but if the Convention will be generous enough to allow the motion to be made now, to recommit with other instructions, I will make the motion to suspend the rules. I move that the rules be suspended in order to consider the article at this time.

The question was taken on the motion to suspend the rules, and it was agreed to.

Mr. CROSMAN. I do not know that I understand the position the matter has assumed, but I, for one, am opposed to the section as it has been amended.

The PRESIDENT. The question is first on the adoption of the amendments made in Committee of the Whole.

Mr. HOVEY. I am entirely unable to see what benefit will arise from the change. Why should we be an exception to the rule of our neighbors, and to the rule of almost every State? For nearly all the States are changing their time of election to November, the day which was mentioned in the original section, so as to conform to the day of the Presidential election. I am, for my part, opposed to this change, and I shall vote against the adoption of the amendments.

The PRESIDENT. Upon further reflection, the Chair is inclined to the opinion that the only mode of reaching this question is, by a reconsideration of the vote which was had yesterday, instructing the Committee of the Whole to make this change. Those instructions required the committee to make these amendments, and the committee has merely complied with the instructions of the Convention. The only way to reach the matter, therefore, is to reconsider the vote instructing the Committee of the Whole.

Mr. DeLONG. I think the Chair is in error. It seems to me that the question, after the amendment comes back from the committee, is on the adoption of the section as amended. It is true that the Committee of the Whole have merely a clerical duty to perform—to make the amendments as they were instructed to do—but when the report comes back, it is subject to further amendment. It may be again referred, with other instructions, or it may even be defeated, at the will of the Convention.

The PRESIDENT. The Chair is inclined to adhere to the opinion that the matter can only be reached by a reconsideration.

Mr. BANKS. As a matter of parliamentary practice, I perfectly agree with the Chair, and I make the motion, in accordance with his suggestion, that the vote by which the committee were instructed to make this amendment, changing the time of election, be reconsidered.

Mr. WARWICK. I desire to call the attention of the Chair to a single point, and that is, the question whether we are to regard the action of the committee, under the instructions, as a finality, or not. If we are, there is no necessity for a reconsideration.

Some further discussion took place upon the question of order involved in the ruling of the Chair.

The PRESIDENT. There is no question of order pending, an appeal not having been taken; and the only question now before the Convention, is upon the motion to reconsider, made by the gentleman from Humboldt.

The question was taken on the motion of Mr. Banks, and it was agreed to.

The PRESIDENT. The question now recurs upon the motion to recommit the article to the Committee of the Whole, with instructions to amend Section 3.

Mr. DeLONG. I ask leave to add to that motion other instructions; which additional instructions are, to strike out Section 32.

Mr. DUNNE. I will ask leave to amend my motion to recommit, so as to refer the article to a select committee of three, to be appointed by the Chair.

No objection being made, Mr. Dunne had leave to modify his motion, according to his request.

SOLE TRADERS.

Mr. DeLONG. Now I move to add other special instructions, namely: to give to that committee of three, instructions to strike out Section 32 of this article. I wish to say only a

went on this subject. I was in the chair when that matter was discussed, in Committee of the Whole, and I keenly felt the importance of the subject involved. I wish now merely to express my views, and to record my vote upon this subject, before we take final action on this article. Section 31 reads as follows:—

"Sec. 31. No law shall be passed, unless upon the consent of a majority of all the members elected to every of the two houses."

I have listened to the arguments which have been advanced here against striking out that section, and I have heard the same arguments used in the California Legislature, against laws of that character. I am prepared to admit that I have seen abuses practiced under the sole-trader law, in a great many cases, and who has not seen abuses under every law, human and divine, existing? But shall we say that any law is not a good law, merely because it has been abused? I think not. I know that under such a law, husbands have taken their property and placed it in the hands of their wives, and by means of perjury, have carried on business with it, in defiance of the just claims of their creditors; and I know that under such a law, business has been carried on ostensibly by women, which was totally unsuited to the character of females. But while I have seen these things, in my private capacity as a citizen, and in my business as a lawyer, yet I have also seen hundreds of instances, where the profligate husband not only refused to pay anything for the support of his family, but even wrung from the wife and mother her hard earnings, and prostituted them to the gratification of his own base appetite, leaving her and her children to suffer and starve. I have even seen the white-boy-seller being suit to recover the wife's wages, and take the fruits of her toil, to pay the debts which her dissolute husband had incurred for bad liquor in his vile hell. I have seen these things until it has made my blood almost curdle, and my soul rebel against the thought of this sort of thing being tolerated—against any law which will allow such things to be done. I say, it is true that the system of sole-traders may have been abused, but where it has been abused in one case, there are hundreds of other cases, in which it has proved the salvation of the wife and mother, struggling to save herself and her children from want and infamy, by her labor. For God's sake, let us extend so much charity to those poor women who may be struggling in the same way, in our Territory! I ask it on behalf of justice; I ask it on behalf of weak and defenceless women and children; I ask it on behalf of those who, though sometimes called upon to bear an equal share of the burdens in the support of the government are, nevertheless, refused a complete recognition by law as individuals.

I say I ask it on behalf of justice. Under that constitutional provision, so long abused in California, they have succeeded, at last, in passing the sole-trader statute, which to-day exists in that State, and which is not liable to be so much abused. And if the law is abused in California, we can reenact the statute of that State on the subject, and improve upon it by making such provisions as will cut off entirely all those abuses. Gentlemen have spoken of the abuses which were experienced in California, three or four years ago; but at that time they had a different law from the present one. Now they have so far improved upon the old law, that they have got a system which suits all. I appeal to gentlemen, while we are engaged in framing our fundamental law, and incorporating into it provisions which are to stand for all time; do not, for God's sake, directly cripple and tie the hands of the Legislature, so that, no matter how crying the aggravation may be, no matter how great the necessity which may present itself, the Legislature cannot act in this matter to protect those poor and powerless human beings who appeal to us in the strongest manner in which one human heart can appeal to another, for redress, or for relief. My amendment is, to strike out this blot upon the honor of our State, for it will be a grievous stain upon the Constitution, if it shall be adopted.

Mr. BANKS. What is the order, I ask, in which these questions are to be taken? I understand that the first motion is, to recommit the article to a special committee, with certain special instructions, and now a motion is made to amend those instructions. It seems to me, therefore, that we have under consideration, two distinct propositions.

Mr. DeLONG. Oh, no sir; an amendment to the instructions is in order.

The PRESIDENT. It is an amendment to the motion to recommit.

Mr. BANKS. I understand that several other gentlemen desire to offer amendments.

The PRESIDENT. The vote will be in this order, if there are no further amendments—first, upon the amendment offered by the gentleman from Storey, (Mr. DeLong,) and then upon the motion to recommit.

Mr. DeLONG. My motion is in the shape of an amendment, or additional instructions.

The PRESIDENT. If it is offered in the shape of additional instructions, it is not in order, and nothing is before the Convention but the original motion to recommit, because you cannot have two propositions under consideration at once. If the gentleman offers it as an amendment, it is in order, but if he offers it as a distinct proposition, it is not in order.

Mr. DeLONG. I offer it as an additional amendment.

The PRESIDENT. Then the Chair decides that it is not in order; we cannot have two distinct propositions before the Convention at the same time.

Mr. CROSMAN. I think if we were to consider it as an amendment, we might get into a muddle. I want to vote against the amendment proposed by the gentleman from Humboldt, and in favor of that offered by the gentleman from Storey.

Further discussion occurred upon the question of order.

Mr. BANKS. I move that the instructions proposed by my colleague from Humboldt be amended by adding to them the instructions proposed by the gentleman from Storey.

The PRESIDENT. Does the gentleman make that as his own motion?

Mr. BANKS. I will move it, if the gentleman from Storey will accept it.

Mr. DELONG. Under the ruling of the Chair, I will accept it, but I desire to have an understanding with the Convention that my motion is not to be put in such a way that the amendment of the gentleman from Humboldt (Mr. Dunne) will defeat my amendment. All I want is to have a fair expression on the amendment which I have offered.

Mr. STURTEVANT. There are several amendments which gentlemen wish to offer, and I desire to ask if a motion to recommit the article to the Committee of the Whole, would be in order?

The PRESIDENT. A motion is not in order to recommit, except with special instructions, but the Chair will state to the gentleman from Washoe that there is no difficulty in reaching any amendment. For instance, the amendment proposed by the gentleman from Storey (Mr. DeLong) may be adopted, or rejected; then a further amendment would be in order, and so on through the whole series, so that a test vote can be had on each amendment.

Mr. BANKS. That places the matter in a clear light. Now, I do most seriously hope that gentlemen who left California two, three, or four years ago, will not take it for granted that the law concerning matters of this kind, regulating the carrying on of business by women in their own names, which was then in force, is the same law which now exists in that State. I have frequently seen frauds committed in that State under that law, and they became so common as to lead men at last to favor the entire wiping out of that statute, on account of its unjust operation in so many instances. I have found that men sometimes act unphilosophically and are apt to judge hastily. But I do not remember that any attempts at repeal have been made at recent sessions of the Legislature of that State, or that at any time, after discussion, any considerable number of members of that Legislature have been in favor of the absolute repeal of the law, although all concurred in the opinion that it should be amended; and now they have a law enacted there which seems to be perfectly satisfactory. I hope that we shall leave our Legislature to pursue the same course which has been adopted in that State, and then they can secure whatever of advantage is derivable from the legislative enactments of California upon this subject, and perhaps avoid such faults as experience may point out.

Mr. CHAPIN. I hope this Section 32 will be stricken out of our Constitution, and therefore I am in favor of referring it to the committee, with instructions to strike it out. I beg to call the attention of gentlemen to this fact, that while we advocate this amendment, we are not asking for a section which shall compel the Legislature to pass a law authorizing women to become sole traders, but we merely ask that this prohibition may be stricken out, so that it may be possible for the Legislature to pass such a law, if in their wisdom they shall think it is best. Now, are gentlemen unwilling to leave this matter to the Legislature, for the experience and wisdom which is to be found hereafter in our State, to decide? I am surprised that gentlemen should object to such a proposition as that. For myself, I am decidedly in favor of the adoption of such a provision of law by the Legislature. My colleague (Mr. DeLong) says, in the name of justice he demands it; and I would go further than that and say, in the name of humanity I ask that such a provision shall be made by our Legislature. It would prevent a great number of divorces, and attempts to obtain divorces from miserable husbands, who are only a nuisance in the family relation. There are noble, struggling wives, who are willing to maintain such worthless husbands, if they can only themselves have the control of affairs, in such a manner that their husbands cannot get hold of and spend all their earnings in the manner which has been pointed out by my colleague. They are willing to bear the burden of worthless husbands, and struggle on in that way, if they can only have the privilege which should justly belong to them, of protecting their own property, in their own right.

Mr. WARWICK. As the gentleman from Storey (Mr. Chapin) has said, I too am in favor of striking out this prohibition from the Organic Act. I find a very general complaint, and with some considerable ground of justice, I believe, in the journals of the day, that there is an apparent design on the part of this Convention to supersede all further legislative action. Now, sir, the object of an organic law is simple and plain. It is not required in its provisions to supply every possible want that may arise in the future, but only to lay down simple and plain rules for the guidance and direction of future legislators, so that they may know exactly where to act, and where not to transgress. The subject under consideration is clearly not a proper one to be incorporated into an organic act, but it is directly and properly a subject of legislation, and therefore should have no place in the Constitution of the State. Neither do I consider this the proper place to advance arguments for or against the policy of such an enactment. If it were in act that might with propriety be passed by this body, then I would say that I am in favor of the provision allowing women to occupy the position of sole traders. Such a law, notwithstanding the hardships that some may encounter, notwithstanding the swindling that some may have perpetrated

under its cloak—I think ought to be placed upon our statute-book, because these evils are by no means counterbalanced with the benefits thereby conferred on that class of the community which has no means of self-protection, except the very law which is inhibited by the section we are now proposing to strike from the organic act of the State of Nevada. I have no desire to trench upon the time of the Convention, but I sincerely hope that this section may be stricken out, and the subject left for future legislative action.

Mr. BROMAN. It affords me a great deal of pleasure to agree with the gentlemen who have preceded me, in their views, in regard to this subject. I do not propose to discuss the question now, for I have heretofore said all I desired to say in regard to it, but I am very much struck with the remarkable inconsistency of the arguments which have been presented by some gentlemen. In speaking upon other subjects property belonging to the sphere of legislation just as much as this does, they were extremely strenuous that in such matters the Legislature should not be left free to act upon its own judgment and discretion, and yet they now complain that we are inserting here in this section a subject-matter which would be more appropriate to the halls of legislation. I would like to have gentlemen consistent in their votes upon these various subjects, and should accord more sincerity to their arguments if they had always been so.

Messrs. BANKS, FITCH, and WARWICK called for the yeas and nays on the adoption of the amendment proposed by Mr. DeLong.

The question was taken by yeas and nays, and the vote resulted—yeas, 14; nays, 6—as follows:—

Yeas—Messrs. Banks, Bateel, Brady, Chapin, Collins, Courtney, Crosman, DeLong, Dunne, Earl, Fitch, Fuller, Friend, Hawley, Hudson, Kinkead, Lockwood, McClean, Parker, Preuss, Shartzer, Thibaud, Wasey, and Warwick—21.

Nays—Messrs. Berkson, Hovey, Kinkead, Mason, Wetherell, and Mr. President—6.

So the amendment was adopted.

The question was stated on the motion of Mr. Dunne, to refer the article, with instructions, as amended.

COUNTY AUDITORS.

Mr. DUNNE. I move, as a further instruction, to amend Section 23, by striking out after the words, "County Recorder," the words, "who shall be ex officio County Auditors," and inserting the same words after the words, "County Clerks," so as to read—

"The Legislature shall provide for the election by the people, of a Clerk of the Supreme Court, County Clerks, who shall be ex officio County Auditors, County Recorders, District Attorneys," etc.

I believe that the reason why this section stands as it now stands is, that it is copied from the California law, but the office of County Recorder in California is a very different one from what it is here. They have very little business there for a County Recorder to do, and his business regards principally the conveyances of ranches, etc.; but in this Territory the County Recorder has an immense amount of business. All the conveyances of mining ground are recorded in his office, and he often has all he can possibly do to attend to that matter. Then he is every day receiving requisitions for abstracts of title, which involve a great deal of labor. His office is therefore one of the most important offices in a county, and one which requires the greatest amount of labor. Now, the County Clerk, it strikes me, is the proper person to fill that position; at least that is the opinion in my county. He is more in communication with the Board of Supervisors, generally being the clerk of that Board, and it strikes me it would be better, at least in all the counties except Storey, perhaps, that the County Clerk should be ex officio County Auditor. If objection is made to having that rule established in Storey County, it can be provided, perhaps, in the Schedule, or Miscellaneous Provisions, that an exception shall be made in respect to that county, leaving the County Recorder to occupy the position there, if deemed necessary.

[Mr. DeLong in the Chair.]

Mr. JOHNSON. I regret to be compelled to disagree with the gentleman from Humboldt (Mr. Dunne,) but I do not think that he has considered the effect that this arrangement would have, in respect to some of the alterations proposed to be made in an important feature of this Constitution. Gentlemen are aware that we propose to establish a judicial system, which will be somewhat peculiar. Under this system, radical changes must necessarily be made in respect to the judicial districts. The County Clerk is, under existing laws, the Clerk of the County, or Probate Court, but under the system proposed, he will be ex officio Clerk of all the Courts which are created, except the Supreme Court.

Mr. DUNNE. Is not the gentleman aware that the County Clerk performs those duties by deputy?

Mr. JOHNSON. In some cases he does, it is true, but this change which is in contemplation, will largely increase the business of his office, in connection with the courts. As we increase the jurisdiction, we necessarily enhance the business of the courts, and we make the County Clerk ex officio clerk of a court embracing the jurisdiction of that which is now the District and the Probate Courts, thus multiplying his duties very considerably. And, judging from the intimations we have had from several members, the gentleman from Humboldt himself included, I conceive that the amount of business in the courts of the various counties is likely to be considerable. In Humboldt County the business of the Courts, as the gentleman himself informs us, is very great, and under the system we propose, it will certainly be very materially increased; and so will it be in other counties, although, possibly,

there must be exceptions. In the county which I in part represent, we have now a County Clerk, and a Clerk of the District Court, separate and distinct from each other, each performing the legitimate duties of his own office. We have also a County Recorder; but the duties of that officer are comparatively trifling, as they are in most of the other counties of the Territory. As a general rule, the amount of the business of the Recorder is less, perhaps, than of any other county officer. Now, we propose in this judicial system, to devolve upon the County Clerks these increased duties, and the gentleman's amendment proposes, in addition to those duties, to require them to perform the duties, and to allow them to receive the emoluments of the County Auditors. I think it would be infinitely better to leave these duties to the County Recorders. What will be the effect of this amendment? Why, sir, the office of County Clerk will prove to be by far the most lucrative office provided for under this Constitution. I cannot now call to mind any other office which would be so lucrative, considering the nature of the duties to be performed, and the expenses incidental to the office, since we have decided to abolish the system of salaries and return to the old system of compensation by fees. I say, I know of no office, and I think there is no office, that will be so lucrative as that of the County Clerk, under the system which we are proposing. Now, sir, I am in favor of a fair division, not only of the duties and responsibilities, but of the emoluments of office, so far as we can make such a division; and I think it would be much better to leave this section as it is, than to adopt the amendment offered by the gentleman from Humboldt.

Mr. TOZER. I do not see that we are adding to the emoluments of either the one or the other office, by adding to the duties of the County Clerk, the duties of the Auditor; because, under the provisions of the section, the office cannot be worth, in any event, over four thousand dollars a year.

Mr. CHAPIN. That has all been stricken out.

Mr. JOHNSON. There is another thing which has been suggested to me by the gentleman from Lyon, (Mr. Kennedy,) namely: that the County Clerk, acting as County Auditor under that provision, would necessarily have to audit and pass upon his own accounts; and there would amount to a very considerable sum, as the experience and observation of all show us. As to the amount of business, we know that the Recorder has little or nothing to do involving accounts, other than those of which anybody can easily judge. I think that is of itself a very forcible reason why this amendment should not be made.

The question was taken on Mr. Dunne's amendment, and it was not agreed to.

SEPARATE PROPERTY OF THE WIFE.

Mr. STUBTEVANT. I move to amend the instructions, by adding, that the committee be instructed to amend Section 31, by striking out the following language:—

"All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be her separate property, and the husband shall not, after marriage, have any right of the wife, in relation to her separate property, or to the rents and profits thereof, except with her consent."

Also, to strike out the word "also," in the next line, so as to leave the section to read as follows:—

Sec. 31. Laws shall be passed, providing for the registration of the wife's separate property.

Mr. DUNNE. Why not, just as well, strike out all the section? If you amend it in that way, you strike out the separate property of the wife altogether, and leave nothing for registration.

Mr. JOHNSON. Then there is nothing left to be protected. By striking out the first part of the section, the wife has nothing which requires registration.

Mr. STUBTEVANT. It would be left for the Legislature, supposing the wife did have property before her marriage, to provide for the registration of such property. My particular objection to the section as it stands is, that it makes it obligatory on the Legislature to provide for her separate property, in every case. For instance, if a rich widow marries some good fellow, according to this section, there must be a law setting her property apart separately, even if she does not desire it to be done. The law must declare that it shall be her separate property; and whether she is willing or not, or whether he is willing or not, makes no difference.

The question was taken, and the amendment was not agreed to.

SPECIAL LEGISLATION.

Mr. BANKS. I propose the following amendment, which I have previously offered in Committee of the Whole. It was then lost by one vote, and I now submit it for consideration, in a fuller house. I move to instruct the committee to amend Section 20, by inserting after the words "public squares," the words, "granting franchises for toll-roads, toll-bridges, and street railroads."

I have not heretofore, in this Convention, offered any amendment which had once been rejected, and I do so now, simply for the reason that when this amendment was submitted before, it was voted down in a very thin house, by only one majority. I do not propose to repeat what I said on the former occasion, but I will add just this: that upon an examination of the statutes, and considering the proceedings of the last Legislature of this Territory, and the preceding ones, I am fully satisfied that this fact cannot be controverted, that if provision had been made by general laws, for doing what the numerous special laws which have been passed were designed to accomplish, we would

three times saved more than one-half of the expenses of the Legislature. The same remark applies to the legislation of the State of California. I am desirous of guarding the future of this State against the enormous legislative expenses arising from the construction of works which can be much better provided for by general laws.

Mr. HOVEY. I wish to propose an amendment to the amendment, which will make it include all railroads. I move to insert the words "or other," between the words "street," and "railroad," so that the amendment will read: "granting franchises for toll-roads, toll-bridges, and street and other railroads."

The question was taken on Mr. Hovey's amendment, and it was not agreed to.

The question recurred on the amendment proposed by Mr. Banks.

Mr. HUGH. I am opposed to this amendment. I do not want to detain the Convention by any argument upon it, but I will say it seems to me, that when propositions have been introduced into the Committee of the Whole, and after a fair, and even a protracted discussion, have been decided upon there, we should let them rest, and not afterwards bring the same propositions before the Convention, in order to fight our battles over again.

Mr. JOHNSON. I will occupy the attention of the Convention on this subject but a few moments, as I have heretofore expressed my views. I recognize the right of the Convention, by a subsequent vote, when a greater number of members may be present, to reverse the action it may have taken upon any question; and I do not deny the right of any member to make a motion for such purpose. Therefore, my objection to the amendment is not for reasons which the gentleman from Storey (Mr. Fitch) has just now submitted—that we have once had a vote upon the proposition, and therefore ought to regard it as settled—but I think, for reasons which I have already presented, that the amendment itself would be impolitic. Instances have arisen in the State of California, where it was found impossible for a general law to be practically useful in respect to public works or improvements, which extended through more than one county. Now, I would acquiesce in the support of this provision, if it were in its character inhibitory only of grants or charters, when the improvements contemplated were to be confined to one county; but it is impossible, and experience has demonstrated the impracticability of it, to incorporate a feature of that kind, in such a manner as to apply where those works of improvement are proposed to be extended through more than one county. For that reason, I hope that we shall not adopt this amendment. If it were proposed to embrace only works of that kind extending through a single county, then I should recognize the fact that the local authorities would be more capable of judging of the propriety of granting the franchises, and deciding to whom they should be granted, than the Legislature of the State could be; but the amendment does not take from the operation of the rule, those works of improvement that are important to the public welfare, where the interests to be subserved are not confined merely to the limits, or within the jurisdiction, of the local Legislatures, or Boards of Supervisors, or County Commissioners. Therefore, I say, such a provision might and very often would, result in defeating the efforts of men to construct works of very great importance.

The question was taken by yeas and nays on the amendment offered by Mr. Banks, and the vote resulted—yeas, 13; nays, 16—as follows:—

Yeas—Messrs. Banks, Collins, Crawford, Crosby, Dunn, Hall, Hovey, Hoyt, Montgomery, Shaw, Wilkes, and Wakefield—13.

Nays—Messrs. Belden, Brady, Bronson, Chapin, De Long, Fitch, Frizell, Fuller, Hanley, Hughes, Kennedy, Kimball, Lockwood, McClanahan, Parker, Pearis, Tagliabue, and Mr. President—16.

So the amendment was not agreed to.

COUNTY AUDITORS—AGAIN.

The question recurred on the motion of Mr. Dunne, to instruct the committee to amend Section 2.

Mr. DUNNE moved to amend, so as also to instruct the committee to amend Section 2, by striking out the words, "who shall be ex officio County Auditors," where they occur after the words "County Recorders," and inserting the same after the words "Public Administrators."

The Secretary read the section as it would stand if amended, as follows:—

"Sec. 2. The Legislature shall provide for the election by the people, of a Clerk of the Supreme Court, County Clerks, County Recorders, District Attorneys, Sheriffs, County Surveyors, and Public Administrators, who shall be ex officio County Auditors, and other necessary officers," etc.

Mr. DUNNE. I make that modification for the purpose of relieving County Recorders from the duty of being also County Auditors. I wish to try it in another manner, because I think this is a matter of great importance. The Recorders here very laborious duties to perform, in the mining counties, and I insist that if the duties of the Auditors be left to them, they will be neglected, or, at least, not properly attended to. But the office of Public Administrator which is here provided for, is one with which but few duties are connected, and by adding to them the duties of the County Auditor, perhaps compensation enough can be given to enable that officer to perform the duties of both offices properly.

Mr. FRIZELL. I profess to be somewhat familiar with the county government and the offices of the several counties. Heretofore, before so many of our mining claims were incorporated, the County Recorders did have a great deal to do. Probably that office in Storey County, a year and a half ago, was worth not

...five thousand dollars. I am told, by good authority, that it was worth at least ... thousand dollars a year, while at the present time, it scarcely requires the attention of one man to perform all the duties of the Recorder's office of Stacey County, during the Recorder's office of Stacey County, during the ... I know of no officer who is more responsible, or to whom the duties of this office of ... more properly belong, than to the County Recorder. It naturally falls to him, I ... under present circumstances, to perform ... duties.

The question was taken on Mr. Dunne's ... to the motion, and it was not ... to.

SALARY OF THE LEGISLATURE.

Mr. LOCKWOOD. I desire to propose an ..., to strike out Section 34.

Mr. CROSMAN. Has not that section already been stricken out, or a portion of it?

The SECRETARY read Section 34, as heretofore amended.

Mr. LOCKWOOD. I will, with the leave of the Convention, withdraw my amendment, as that matter appears to have been already ... upon.

Mr. BANKS. I understand that that portion of Section 34, which provided that members of the Legislature shall receive eight dollars per ..., etc., has been stricken out.

The PRESIDENT. It is contemplated to ... in the Schedule, for the compensation of the first Legislature, and thereafter the rate of compensation can be established by law. I understand it was not thought advisable to ... that provided for the first Legislature, in the general frame-work of the Constitution, as it is merely a temporary matter.

THE HOMESTEAD.

Mr. CROSMAN. If amendments are still in order, I will move to instruct the committee to amend Section 30, by reinstating the language in the beginning of that section which has heretofore been stricken out, so that it will read as in the printed section. The amendment ... is to strike out the words specifying the ... ment of the homestead to be exempted—"Not exceeding one hundred and sixty acres of land, outside of the limits of a town or city, or not exceeding one acre within the limits of any town or city, occupied as a residence by the family of the owner, together with all the improvements on the same, of the aggregate value of five thousand dollars,"—and to insert instead the words "as provided by law." My motion now is, to instruct the committee to strike out the words which were inserted, and to reinstate the language in the original section.

The question was stated on Mr. Crosman's ...

Mr. WARWICK. Now, Mr. President, when the motion was made the other day, by the honorable gentleman from Lyon, (Mr. Kenaday,) to strike out that language, no opportunity was offered for argument. I then considered that there had been no action taken by this Convention, from the first moment we assembled here up to that time, that was so utterly ill-advised, or calculated, to be so insensible in its effects. That gentleman, sir, has yet to find what it is to have children growing up around him—what it is to rest beneath the family roof-tree, or to rear that sacred structure, whether it be great or humble, to which we all look as a shelter and a home. It may be, sir, that not in the present, but only in the past, that gentleman realizes what "home" means. It may be that he has never heard the voices of his own little ones, or of his wife, and therefore he fails to understand that feeling which we who have reared our family roof-trees in this distant land do all experience, when we have our wives and little ones around us.

This provision, as it was originally incorporated in our organic law, I regard as being one of the most wise and beneficent features of modern legislation. It is a feature which has been incorporated into the organic law of every State of the Union which has framed or remodelled its Constitution during the last ten years; and it is one which, by legislative action, has been incorporated into the laws of every State and Territory, in the loyal portion, at least, of the American Union. Sir, I never was more astonished in my life, than when I witnessed the action of this Convention the other day—action taken on the spur of the moment, without thought—by which this provision, which I consider, as I have said, one of the wisest features of modern legislation, was stricken out from the organic law of our future State. What was the occasion of that action, sir? Gentlemen may tell you that the amount of the exemption here proposed may prove in the future to be too large, or that it may not be enough, and that therefore it is a proper subject for legislation. That may be, or it may not be so. But still I say, whether it be too much, or whether it be too little, is not a question here. We propose to fix a bound, and say that here the wife and the children shall be secure, in every contingency; that if the husband, by his industry, has accumulated enough for a home, to the value of five thousand dollars, or less, that home shall be secured to the wife and the children. Can the gentleman estimate the amount of hardship that would ensue, if the Legislature, acting as ill-advisedly as this Convention did, on the spur of the moment the other day, should strike out this provision altogether, from our laws, and should thus throw the wife and children of every debtor upon the mercy of heartless creditors, or leave them at the mercy, if you please, of a dissipated husband?

Mr. FITCH. Will the gentleman from Lander allow me to ask him a question? I am misinformed if the fact is, as the gentleman states, that the Convention struck this provision out. I am informed that the action of the Convention was merely to strike out the value

of the homestead, leaving it to the Legislature to fix that value.

Mr. WARWICK. That is the point I am objecting; that the other day when action was taken on this subject, there was no opportunity for argument, and nothing was said as to why it should, or why it should not be stricken out. I am in favor of the reinstatement of the limitation of the value of the homestead. I want this provision as a protection to the wives and children in this Territory. If the industry of the husband has accumulated sufficient for a home, and he has afterwards become dissipated, I still wish to say that the wife and children shall remain in a dwelling place, which shall be entitled to the name of home, and of which no action of the husband and father can deprive them. If there could be any good reason shown why this provision should be left out, or why the subject should be left to the uncertain action of future legislatures, then I might be in favor of the proposition to strike it out, which was carried the other day, with little or no argument upon it, one way or the other. The moment the motion was made, if I recollect rightly, the question was taken, debate being cut off, and I think there was no argument whatever upon the question. I hope, therefore, that this section will be left precisely as it was adopted by the former Convention.

Mr. JOHNSON. When this subject was under consideration before, I gave notice that I would, at a proper time, move to reinstate the matter which was then stricken out. As the gentleman from Lassen states, the matter was then presented to the Convention, in the shape of a motion to strike out, and very hasty action was had upon that motion. As far as I was concerned, I had no opportunity of even examining the section, to see what would be the effect of striking out that portion of it; and it was in consideration of the fact that I did not understand the effect of that hasty action of the Convention that I gave the notice I did. At a subsequent time I examined the section, with that portion stricken out, and I became satisfied, as I am now, that this section is in an infinitely better position for the protection of those wives and children to whom the gentleman from Lassen refers, than it would be if we were to incorporate the words which have been stricken out. And, entertaining that opinion, I have said to the gentleman who was the mover of the amendment that I did not intend to make the motion to reinstate, of which I had given notice.

Now, I do not object to the premises advanced in the argument of the gentleman from Lassen, because I agree with him in every word; but it is the conclusion at which he arrives wherein we differ. I am desirous more of the evils of which he speaks as likely to arise from the amendment which has been made, but I do believe that very injurious results would follow from the reinsertion of those words which have been stricken out of the section. Gentlemen fully well understand upon the matter of currency is fluctuating. One dollar in the price of "greenbacks," to use a familiar and well-understood term, varies from time to time. How much is a homestead, worth five thousand dollars in "currency," yesterday, to benefit that family, or the wife and children of which the gentleman so eloquently discourses? Why, sir, when this section was incorporated into the old Constitution, greenbacks were worth probably ninety, and certainly not less than eighty-five cents on the dollar, and a homestead nominally in value then to five thousand dollars, was worth nearly five thousand dollars; while to-day, a homestead valued only at that amount in currency, would scarcely be worth more than two thousand dollars in gold. As I understand it, it was the desire to obviate the evils which are likely to flow from these changes of value in the currency, that prompted the gentleman from Lassen (Mr. Kennedy) to make the motion to strike out that portion of the section. At any rate, whether that was or was not the motive which prompted the motion to strike out, it is the motive which now determines me to keep that language out, and to oppose the motion to restore it.

And here is another point: we have now a homestead law in our territorial statutes, which fixes the value of the homestead at five thousand dollars, and we propose to provide in this Constitution that the laws in force in the Territory shall be continued, except so far as they may conflict with the Constitution, until they shall be repealed or altered by the Legislature.

The PRESIDENT *pro tem.* (Mr. DeLong in the Chair.) Will the gentleman permit a moment? I observe that Ex-Governor Stanford of California is in the lobby, and I invite him to walk inside the bar, and take a seat.

The Honorable LELAND STANFORD came within the bar, and was provided with a seat.

Mr. JOHNSON (continuing.) We have protection, therefore, for the wife and children, so far as the laws apply, until such time as the Legislature may deem it proper to specify a greater sum as the limit of the value of the homestead, which they would probably do in the event of the continued depreciation of the values of the currency. I think ample protection is afforded—that all that is essential is retained in the section, to effectively protect such rights as ought to be protected. For these reasons, I hope the amendment will not prevail, and that the section will be left as it is now, giving the Legislature power to modify laws carrying out this intent in such manner as they may deem just and proper.

MR. KENNEDY. I did not desire to make any argument upon this question, but since the gentleman from Lander (Mr. Warwick) has attributed rather unpardonable motives to me, on account of my action in this matter, I wish briefly to explain my views. I do not want to legislate against any man's wife or children. All my objection is to stating in the Constitution the size and value of the homestead, so that it cannot be altered, under any circumstances that may arise. I am entirely willing that the Legislature shall provide a homestead of some kind, and I would leave it to the representatives of the people to alter or change the extent and value of such homestead, from time to time. Now, the gentleman contends, as I understand him, that by hasty action, the Legislature may repeal the homestead law; but most certainly they cannot do it under this provision. They must provide a homestead law which can be made available by every family.

MR. FITCH. I am somewhat amused at the gentle course of my friend from Lander (Mr. Warwick) in regard to this subject of legislation. He favors the striking out of a provision which does not please him, because he says he is not in favor of legislation in the Constitution, and he appeals to members not to legislate; but when another provision comes up, which does please him, then he is in favor of legislation, and opposed to trusting the important matter to the future uncertain action of the Legislature. I suggest that for the sake of consistency, the gentleman had better confine himself to one side or the other exclusively, and either be for or against legislating in the Constitution, all the time.

MR. WARWICK. With all due deference to the gentleman from Storey, (Mr. Fitch,) I would say, Mr. President, that undoubtedly, of all the members of the Convention, he is the last one who ought to speak of consistency. It is a word with which he is not at all acquainted, the meaning of which he has never studied, and he is not qualified to judge in regard to it. Therefore I submit to the Chair that he is entirely out of order in rising to any question upon the word "consistency."

MR. FITCH. I accept the gentleman's apology. [Merriment.]

The hour for recess having arrived,

The PRESIDENT *pro tem.* declared the Convention at recess until two o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock, P. M., and was called to order by the President.

LEGISLATIVE DEPARTMENT—THE HOMESTEAD.

The PRESIDENT. The question before the Convention is the motion by the gentleman from Lyon (Mr. Crosman,) to instruct the special committee to amend Section 30, of Article IV, entitled Legislative Department, by inserting the language heretofore stricken out, limiting the extent and value of the homestead.

MR. DeLONG. I rise to a question of order. Under Jefferson's Manual, this amendment is not in order, because, although it is proper to commit the article to amend a part of it, yet this amendment is not an amendment to the original motion to recommit, but relates to a different section. I think we had better consider this article, one section at a time, and not compel any member to vote for an amendment which he does not like, in order to carry an amendment which he does like.

The PRESIDENT. The Chair will sustain the point of order. A motion to recommit the article, with instructions, was made by the gentleman from Humboldt, (Mr. Dunne,) and following that, the gentleman from Storey, (Mr. DeLong,) offered, as an independent proposition, a motion to recommit another section, with instructions. That, the Chair decided was not in order, unless it was to be regarded as an amendment. So far, the Chair doubtless was correct; but I am now satisfied that I was wrong in not ruling out the amendment on the further ground that it did not amend the same section as that to which the gentleman from Humboldt had offered his amendment. It should not have been held in order until action had been taken on the motion of the gentleman from Humboldt. Hereafter, the Chair will hold that no amendment is in order upon a motion to recommit, unless it amends the same section to which the original motion applies. The effect of the course we have been pursuing might, as the gentleman from Storey has suggested, be this: that by the adoption of numerous amendments to different sections, the minority on the distinct question of recommitting for any specific amendment, might become the majority. The only proper method is, I think, to take the vote separately upon each proposition. The amendment to Section 30 is therefore not before the Convention.

MR. TOZER. Then I move to recommit Section 30, with special instructions to make the amendment.

The PRESIDENT. The motion is not in order, for the reasons already stated.

MR. CROSMAN. Certain motions were made to amend other sections, some of which were adopted. Among them, I remember an amendment was offered to Section 32, which prevailed. Now, I ask, under the ruling of the Chair, what is the position of that section?

The PRESIDENT. It is of course somewhat irregular, the question having been improperly taken, but the Chair will hold that that section has been recommitted to the special committee, with instructions to strike it out, such having, in fact, been the action of the Convention.

DAY OF ELECTION.

The question was stated to be upon the motion of Mr. Dunne, to recommit article IV to a special committee, with instructions to amend section 6, by striking out the words, "Tuesday next after the first Monday in November," and inserting the words "first Wednesday in September;" and also, by adding to the section the words, "except as hereinafter provided;" so that the section would read:—

SEC. 6. The members of the Assembly shall be elected biennially by the qualified electors of their respective districts, on the first Wednesday in September, and their term of office shall be two years from the day next after their election, except as hereinafter provided.

The PRESIDENT. The Chair will rule that no motion to amend this motion is in order, unless it proposes to amend the same section.

Mr. KENNEDY. I will ask for a division of the question, because I would like to vote for one part of the amendment, and against another part.

The PRESIDENT. The gentleman has an undoubted right to call for a division of the question. The question will first be on striking out the words "Tuesday next after the first Monday in November," and inserting "first Wednesday in September;" and next, upon adding the words "except as hereinafter provided."

Mr. KENNEDY. I ask to have the vote taken first on the motion to strike out and insert, and in that I have that portion now marked as adopted, in my copy.

The PRESIDENT. It was once stricken out, but afterwards, the vote was reconsidered.

Mr. DUNNE. The Convention yesterday adopted that amendment, and now, if it is proposed to change that action, I, for one, want to know some reason for it. Why should we now undo what we did yesterday?

Mr. BANKS. If the gentleman desires reasons for allowing the section to remain as we find it in the old Constitution, I can very briefly express my reasons for voting against his amendment. One reason is, that as it stands now, the election will come on the day of the Presidential election. Those who desire to have the section remain as it is in this printed copy, want the election to come every year on the day corresponding with the day of the Presidential election, and undoubtedly, if there are not good reasons for selecting some other day, the gentleman will concede that that is the proper day. At all events, he will concede that it is the proper day, in the year of the Presidential election; and if it is right once in four years, I infer, as a matter of regularity, that it should come on the same day in other years.

Now what reason does my colleague assign for making this change? He says that on account of climate, and some other reasons which I forget, that it is not so convenient to conduct an election canvass in the month of November, as in September. And another reason which he urged, I remember now, was, that at the latter portion, our population was likely to be larger than in the month of November. But I think, for all practical purposes, November will be the better time, because during September, a large proportion of our population, who usually in now constituted, are running over the hills, engaged in prospecting, and consequently are not where they would be disposed to vote. More of them will be at home, I presume in say, in November, than in September. The argument, therefore, is not a valid one that our vote will not be as large in November as in September. Again, the gentleman's argument in regard to the time of making the canvass has no weight, because men will be more busy in September, and there will be less time for conducting the canvass, than if the election be in November. I hope we shall have to vote every year in November, and hence, I shall vote against any change.

Mr. DUNNE [in his seat.] I guess the Convention generally thinks the same way, and I will not make a speech.

The question was taken on the motion to instruct the committee to strike out and insert, and it was not agreed to.

The question recurred on the latter part of the motion, instructing the committee to amend by adding the words, "except as hereinafter provided."

Mr. BROMAN. It seems to me, at the present time, that that is not necessary, because it was only put in in view of a special provision to be made in the Schedule.

Mr. DUNNE. There is no necessity for it, and I will withdraw it.

THE HOMESTEAD.

Mr. TOZER. Now I move to recommit Section 30, of Article IV, to a special committee of three, with instructions to amend, by striking out the section as printed, and inserting the following:—

SEC. 30. The Legislature shall provide by law for exempting from forced sale, under any process of law, a homestead for families, which shall not be alienated without the joint consent of both husband and wife, when that relationship exists, and which, when separated, shall not be of a value exceeding the sum of five thousand dollars; and which, to benefit those entitled to it, shall be selected, designated, recorded and set forth in a written declaration, by the owner, and acknowledged by him or her, and recorded in the office of the County Recorder of the county in which the same is situated; but no property shall be exempt by law from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon; provided, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife.

The PRESIDENT. It will be remembered, I suppose, that the previous action of the Convention will be regarded as in order, so far as relates to the amendment which was adopted by the Convention in reference to the same matter.

Mr. DeLONG. That is understood.

The question was stated on Mr. Tuer's amendment.

Mr. DeLONG. I sincerely trust that the amendment offered by my colleague for this section will be adopted. If the Convention will bear with me a moment or two, I will give the reasons why I am in favor of its adoption. They are not reasons born of a moment, or which have been conceived at the present time, merely in consequence of conversation with other gentlemen on this subject; but I have thought of this matter for years. I remember that once, in a conversation which I had with Judge Field, of California, the question arose as to the nature of the homestead law of that State, and Judge Field then advanced some ideas, which struck me as being extremely forcible, in relation to that law as it existed in California; and they apply, with peculiar appropriateness, to our own case, because, by this printed section here, we are following, almost exactly, in the track of the California Constitution; and our own courts would construe the provision in the same way as the courts of California have construed the Constitution of that State. In California, a man is allowed to hold property, not to exceed five thousand dollars, as a homestead; but if that property becomes worth more than five thousand dollars, it is subject to levy and sale, as a whole; it may not be divided. In that case, the whole is sold, and five thousand dollars of the proceeds is paid over to the judgment debtor; and thus is presented the extraordinary phenomenon of a man having a homestead of five thousand dollars, all in twenty dollar pieces, in his pocket. Then, perhaps, he goes and buys five thousand dollars worth of goods, or, if he prefers, he lays it out in flour, and then he has a homestead consisting of five thousand dollars worth of flour. How ridiculous that appears, and how contrary it undoubtedly is to the intention of those who framed that Constitution! The man may expend his money, if he pleases, in the purchase of a drove of hogs, and then he will have a homestead consisting of five thousand dollars worth of hogs. [Laughter.] That is the view which Judge Field presented of the matter. It is entirely contrary to the plain intention of those who framed that organic act; but in what respect does our action differ from that, at the present time?

The idea of a homestead law is, not merely to exempt so much property by law from execution and forced sale—if that were the case, we need not exempt a homestead at all; we might say directly, five thousand dollars worth of property should be exempt, no matter what it is—but the idea is one which is founded upon the old English maxim, that every man's house is his castle—that it is his sanctuary and retreat from all the cares of life, and all the persecutions which the world can bring against him. That is what is intended, and we ought to frame our Constitution in such a manner as to carry out that view; allowing the homestead law merely to protect that asylum against the execution of creditors. Now, sir, if we adopt the section as it stands in the printed Constitution, what is the result? No matter whether the amendment offered by the gentleman from Lyon (Mr. Kennedy) prevails, or the original section stands, it makes no difference in that regard, for whether you do the one thing or the other, you still leave the Legislature to prescribe the value of the homestead. Suppose the Legislature to fix the maximum value at five thousand dollars, or a thousand dollars, or any other sum you please to mention; then the head of the family, having recorded his homestead, enters upon the enlargement and improvement of his house and home. It is then worth the sum specified by the Legislature in the statute, and as a consequence, it is exempt by law from execution. But mark you the results that may follow. Perhaps the man, having a family, and being thus situated, happens to be a man of culture and taste, and a man of industry. In that case, he employs his leisure time in beautifying that home, which is the retreat of his family, and the spot above all others dear to his heart; and as he finds time from day to day, he plants a shrub here, and a flower there. To-day a tree is planted, and to-morrow an ornamental paling is put up, and so on, until finally his home becomes full of attractions. He makes it an object to be coveted by his rich neighbors, or by some malicious enemy, and, sir, the very moment that that neighbor of his, or that enemy, may be willing to give a single dollar for that homestead more than the sum specified by the statute as its value, that moment the man is turned out of doors, with the money in his pocket, it is true, but with no home to go to.

That is the result of the homestead law under the present Constitution of the State of California. It is entirely erroneous in policy, and wrong in principle. I say we should fix the limit in the start. We should say that when a man takes his homestead, it shall be worth no more than five thousand dollars. Then we do not give a man a chance to make a big fortune, and swindle his creditors, by placing all his property in his homestead. If he commences at that figure, and files his declaration, he will not obtain credit upon that property which he has set apart as his homestead. He gives notice to the world by the act of recording his homestead, that that property cannot be touched to pay his debts, and then nobody is defrauded. Nobody can lose a dollar by it, because every business man will understand that that homestead is no basis upon which he can give the man credit; and if he owns nothing aside from that, he has no basis upon which to obtain credit except his honor. Then, too, such a man can go on with that feeling of security and pride which the head of a family likes to enjoy in his domestic affairs, to beautify and adorn his home. He can do so with a full consciousness

that no trick of the law, no covetousness of his neighbor, can take from him that household altar, after he has prepared it as the place where he expects to live and die, and where his wife and children are to reside when he has gone from them.

I would like to see the idea of the homestead carried out in that way, and the amendment offered by my colleague meets that point precisely. It does not afford any opportunity for swindling, but after the man has fixed upon the spot of earth where he intends to dwell, and where he proposes to rear his family, it secures that place to him for all time to come. Is not that the true consideration, the intention and meaning of the homestead act? Not to give a man five thousand dollars in money, or five thousand dollars in hogs, or five thousand dollars in flour; not to allow him, if you are his creditor, to walk by you in the street with five thousand dollars in his pocket, which you cannot touch; but to make sacred and secure the household and roof-tree. The moment he converts that homestead into coin, by the joint consent of husband and wife, that moment the property becomes liable for his debts, but so long as it remains a home, the asylum of the family, let it be inviolable forever.

Mr. BANKS. I desire to ask a question or two in regard to this amendment. Does it contain a restriction equal to this—that one hundred and sixty acres of land outside of a town or city, or one acre of land within the limits of a town or city, shall be exempt?

Mr. DeLONG. Nothing of the sort. It starts in, not by saying how much land in town, or city, or county, shall be exempt, but it says that when it is claimed as a homestead originally, it shall not exceed in value five thousand dollars. That is the limit in the start, and after that, after it is properly secured and recorded, no matter how much it becomes worth, it is still his homestead, and cannot be taken from him.

Mr. BANKS. I fully agree with the gentleman in regard to the nature of the homestead, and the manner in which it should be regarded in legislation. I believe it should be regarded as a place sacred for the home. But my objection to this proposed proviso is this, that it does not limit the amount of land which may be contained in the homestead, and hence I desire to see incorporated in it these words:—

"Said homestead, not exceeding one hundred and sixty acres of land outside of the limits of a town or city, or not exceeding one acre within the limits of any town or city, occupied as a residence by the family of the owner, together with all the improvements on the same."

These words will be found in Section 30, as here printed, and I offer them as an amendment to the proposition of the gentleman from Storey, (Mr. Tozer.)

The object of this amendment, I think, will be apparent to gentlemen. It is proposed to prevent a man who is about to fail, from speculating in lands which he presumes will rise in value. A man might buy, in a flourishing town, or in an agricultural district, a large amount of land, and set it apart as a homestead so as to be beyond the reach of his creditors, and in a few years he might thus become a millionaire, although keeping his property out of the hands of his creditors. We do not desire to enable a man to acquire and hold any more than will suffice for a legitimate homestead.

Mr. DeLONG. Inasmuch as the gentleman's proposed amendment does not conflict with my theory of what a homestead should be, I have not much objection to it. But then I fail to perceive much of logic in the argument. It strikes me that when the limit is fixed at five thousand dollars at the time when the homestead is entered—when we consent to incorporate that saving clause—it ought to satisfy every man. It may be that I might claim a lot in a village worth not more than a thousand dollars. Then I file my declaration, claiming it as a homestead, yet from the growth of the city, the necessity of laying out new streets, or something of the kind, or a change perhaps in the locality of the principal business of the village or city, my property, which was only worth when I bought it one, two, or three thousand dollars, might suddenly become very valuable, like lots in the city of New York which have been known to rise in value to fifty or a hundred thousand dollars. There might be cases where such a thing would occur, I admit, but when it does occur, who is injured by it? I cannot see that any one is. Nobody has given that man credit on the strength of that property because they knew they could not levy upon it and sell it to pay his debts, even if it went up to a hundred thousand dollars. I shall not object, however, to the amendment offered by the gentleman from Humboldt, although I think that a man should have as much right to enter a thousand acres of land in the country at a dollar an acre as another man has to enter an acre in a village worth a thousand dollars—just as much right to set it apart as a homestead. It seems to me that all men should be put on an equality in that respect, whether in town or country. And suppose the land set apart as a homestead does rise in value, who is injured by it? I do not see that any one is. But still, I say, it does not interfere with my general theory in regard to the home. It certainly would be an injury to a man, if, the moment his homestead comes to be worth above five thousand dollars, it is liable to be sold, and he turned out homeless into the world, and it would be a much great hardship if the widow and children were liable to be turned out in the same manner.

Mr. COLLINS. Do I understand that the amendment of the gentleman from Humboldt is designed to exempt as a homestead one hundred and sixty acres of land in the country, or one acre in a city, irrespective of the value of the land?

Mr. DeLONG. No sir. That is qualified by

the balance of the section. It can only be worth five thousand dollars when it is recorded, whatever may be the extent.

Mr. COLLINS. If that is the construction of the amendment of the gentleman from Humboldt, I do not know that I have any opposition to make to it, but I would like to say a few words in relation to the amendment of my colleague from Storey, (Mr. Toner.) With all that my other colleague (Mr. DeLong) has said in reference to the exemption of the homestead, I cordially agree. I do think that this idea of the homestead is one of the sublimest ideas of the age. It is a principle which has sought form and shape, and come like an angel of mercy to hover over and bless the families of our nation. And I do think that, while we are engaged in framing an organic law for the government of this State, it becomes us to look well to every amendment or change we make, and therefore we ought carefully to consider whether or not this amendment proposed by the gentleman from Storey is preferable to the original section, as contained in the printed Constitution adopted by the Convention of last year.

Now, sir, every law is good just in proportion as it conspires in its operation to awaken and develop sentiments of truth and justice, and to inspire fair dealing between man and man; and every law is bad just in proportion as it promotes or awakens a spirit of avarice and dishonesty, or in its operation tends to produce distrust, deceit, unfair dealing and dishonesty. When the amount proposed to be exempted under the homestead law is defined and fixed, whether it be one thousand, five thousand or ten thousand dollars, when there is a declaration of a fixed amount, as the extent to which an individual may invest, then he knows that beyond that amount it is dangerous for him to invest. If, on the other hand, the individual may be allowed, under the operation of this homestead provision, to invest a thousand dollars, or five, ten, twenty, thirty, or a hundred thousand dollars, if he pleases, if there is no fixed limit to the amount of his investments, it appears to me that there will be an influence calculated to arouse in his bosom a spirit of avarice and cupidity. It will be an intimation to the man who is on the verge of failure, when his prospects look dull and gloomy, when a cloud hangs over his future, which will lead him to say to himself—"I will put an additional investment here, and an additional investment there, and I will add to my homestead so as to better my condition at the expense of my creditors, and I will bury my money here, so that my creditors cannot reach it."

Mr. DeLONG. I think the gentleman misunderstands the amendment. It says distinctly that the homestead shall not be worth, at the time of its acquisition, more than five thousand dollars.

Mr. COLLINS. I understand that. But when the shadow hangs over a man, when there is darkness and danger of disaster and destruction, then the time comes when he is seized with the desire to save something from the prospective wreck; and instead of paying his creditors, will he not be greatly tempted, under such a provision, to make improvements in his homestead, and to expend whatever money he can in that way? His homestead may be worth but a thousand dollars when he sets it apart as a homestead, yet by the exercise of genius, taste and skill, and the expenditure of money, he may be able to throw improvements around the home of his family which may increase its value perhaps from a thousand to a hundred thousand dollars. I think five thousand dollars is a large enough amount to secure to a man whose creditors are honestly entitled to their pay. I am well aware that, as my colleague says, there is an advertisement to all the world that whatever improvements he makes are for the benefit of the family home alone; but, nevertheless, I fear that there would be a lurking temptation which would conspire to induce a man to take dishonest action, and to divert that money which should be applied sacredly to the payment of his creditors, to the embellishment of his own household arrangements. If this view is not a well founded one, if the provision will not really operate in that way, I should be most happy to support the amendment of my colleague, for I do maintain that if one thing should be made more sacred than another, it should be a man's home, where his family is congregated.

Mr. FITCH. Will the gentleman allow me to interrupt him. In the State of Wisconsin a law has been passed enabling a man to set apart a homestead of an acre of ground in a city, and the result of it was seen at the time of the crash in 1848, when men who were on the point of falling claimed homesteads worth fifteen or twenty thousand dollars, and built themselves elegant houses, in which they lived in spite of their creditors.

Mr. Mr. DeLONG. They could do that under this original section.

Mr. FITCH. They could under this amendment.

Mr. DeLONG. I think not.

Mr. COLLINS. It occurs to me that there is, under this proposed amendment, a temptation to dishonesty, because there is no limit to the exercise of a man's taste and skill in the way of improvements and adornment. I may be mistaken in regard to my construction of the amendment, but if so, I think I must be very stupid.

The PRESIDENT. Will the gentleman let the Secretary read the amendment again; it may save time.

The SECRETARY again read Mr. Toner's amendment.

Mr. COLLINS. I think I am correct, and I have listened twice to the reading of that amendment, and with great attention.

The PRESIDENT. The gentleman from Storey will pardon the interruption. He has a right to draw his own conclusions, but as he seems to a different conclusion from my own, I thought he might have misunderstood the amendment.

Mr. COLLINS. Does the President still think I am wrong?

The PRESIDENT. The Chair cannot say that, though I may say it as a member of the Convention.

Mr. DeLONG. Is that taking for an opinion?

Mr. COLLINS. I certainly think that, according to the reading of the amendment, the quantity of land which may be set apart for a homestead is unlimited. It may be one acre, or twenty acres, or one hundred and sixty acres. And I see nothing that forbids a man's making any embellishments in his homestead he chooses to make. I ask, therefore, if the tendency will not materially be that when a man finds himself on the verge of bankruptcy, whether as a merchant, a banker, a stock-broker, or in any other business, he will be induced to invest in his homestead, and put embellishments and improvements upon it, to the value, perhaps, of thousands, or even of tens or hundreds of thousands of dollars? That action would not conflict in the least, that I can perceive, with either the letter or the spirit of the homestead provision. Men, having the ordinary frailties and weaknesses of human nature, will yield to such temptations, and I ask if we shall adopt provisions which in their operation must conspire to make honest men dishonest? I would prefer to double the amount. Fix the maximum value of the homestead, if you please at ten thousand dollars, giving a man an opportunity to make expenditures to that amount for all those matters which gratify his taste or his genius, but do not offer him, while he owes honest debts, and while his creditors are suffering, an opportunity to defraud them by investing his money in that manner. A man's creditors might be suffering, and their wives and children in want, while the debtor, availing himself of this provision, might be rolling in wealth and luxury. If gentlemen can answer these objections, and make it clear to my mind that there is nothing lurking in that amendment which will tend to make men dishonest, and to rob their creditors of that to which they are justly entitled, I shall be most happy to support the amendment.

Mr. CHAPIN. I have two objections to this amendment, the first of which has not yet been alluded to, although the second has been very ably discussed by my colleague, (Mr. Collins,) who has just taken his seat. The first objection I have is, that the amendment does not make ample provision for the family. It says that the homestead—their castle, their refuge—shall not exceed five thousand dollars in value, and at the present time, in our national currency, that would be equal in coin to only about two thousand dollars, and in two months from this time it may be it would not amount to a thousand dollars. I object to the amendment, therefore, on the ground that the limit is not sufficient. It seems to me that we ought to specify a much larger amount.

Mr. COLLINS. Does the amendment fix the amount at all?

The PRESIDENT. It specifies five thousand dollars as the maximum value at the time the homestead is set apart.

Mr. CHAPIN. Well, sir, that does not afford the protection which we ought to extend to the family in our State. I would not place the amount less than five thousand dollars in gold currency, and I would like to see an amendment made in that particular. On the other hand, the matter is left open by this amendment to great evils. As my colleague has stated, there is too much liability to fraud. There is no provision, as I understand, limiting the amount of improvements. Having once set apart the homestead, a man may put on improvements indefinitely, and in that way commit frauds to a great extent. Therefore, if we are in the spirit of the amendment, I do not approve of it. In the first place, I am in favor of putting in a liberal amount, and then of establishing a limit in regard to improvements, so that frauds cannot be perpetrated.

Mr. TOZER. I rise to claim the privilege of replying to the objections offered by my colleague (Mr. Chapin) to the instructions proposed by me to be given to the committee. The first objection he urges is, that this amendment should specify the value of five thousand dollars, in gold coin. I most sincerely believe, hope and trust, that the time is not far distant when the legal tender notes of the National Government will be equal in value to gold coin, and I do not think it comes with good grace from us to provide in our Constitution for the present disparagement of our national currency or for a prospective difference between the value of gold coin and the value of the treasury notes of the Government. Let us set the value at five thousand dollars, and trust that that five thousand dollars, at a subsequent day, whether in legal tender notes or in gold coin, will be equal in value. I think that a careful reading of the amendment and entering into which I have offered, will do away with the other objection of my colleague. It expressly provides that the value of the homestead, when acquired, shall not exceed five thousand dollars.

I have no objection to the amendment offered by the gentleman from Humboldt (Mr. Banks,) and will, at the suggestion of my colleague, (Mr. DeLong,) at this time, accept it. The amendment, as offered by myself, expressly provides that the improvements in the shape of fences, ornaments, and shrubbery, or anything else which goes to add value to the premises, shall not be exempted from execution, but the property itself, the land upon which the improvements may be put, shall be exempt.

The PRESIDENT. If the gentleman will permit me to make a suggestion, I think he is mistaken in his construction. I think the gentleman's amendment provides that those improvements shall not be exempt from execution for indebtedness contracted in making such improvements, but they are exempted so far as it relates to general indebtedness. The language is—"or for the erection of improvements thereon"; it provides only that the homestead may be liable for the indebtedness contracted for the improvements.

Mr. TOMES. It should be amended in that respect, then, and I hope it will be.

Mr. COLLINS. I should be in favor of it, sure.

Mr. DuLONG. I wish to say a word or two in reply to the remarks of my colleague (Mr. Collins). That gentleman states as an objection to the substitute proposed by my colleague (Mr. Tomes) what is to be said of any human law ever enacted on earth, and that is, that it is subject to abuse. The very law which the gentleman has suggested in the place of this, is also subject to abuse, and I will show him in what particular. It is very difficult to make a law by which, if you owe me a thousand dollars, and have a thousand dollars in your pocket, I shall be enabled to collect my due from you, and that is not done under the particular homestead law which these gentlemen desire to see established. They say if we limit the value of the homestead to ten thousand dollars, including all the improvements, they will vote for it. But what would be the consequence? My homestead will sell, say for eleven thousand dollars, and out of that amount, ten thousand dollars in gold comes to me, under a law of this kind, and I then walk through the streets of Carson with my ten thousand dollars. I have got my homestead in my breeches pocket, where you cannot touch it. I say, therefore, that that law can be abused, and every law on earth is liable to be abused by bad men. Under the operation of this amendment, some man, it is true, finding that he is about to fail in business, may wish to secure to himself an elegant home, if nothing else, and may invest his money in beautifying and adorning his homestead, prior to his failure, so that he may have something left when he does fail; but where there is one case of that kind, there will be a thousand cases where the home will be secured to the family, and they be made happy by retaining that little spot of earth which is always sacred to the human heart. The birth-place of the children would be left to them, and the family could still live in the home hallowed by the associations of the past.

Again, my colleague tells us that a man in good and prosperous circumstances, believing that he is about to fail, might, with the intention of defrauding his creditors, invest a large amount of money in his homestead; in other words, that he could put into the homestead the money which is due to his creditors, and that he could continue to do so until he should have reared a palace, and that palace would be exempted by law, under the operation of this proposed section, from the payment of his debts. But does the gentleman remember the old rule of the law, that fraud vitiates everything? Does not he know that the homestead exemption would be set aside when it should be shown that it had been acquired in fraud of the creditors? A man may make a deed of gift of all the property he owns in the world, conveying it to his wife and children, and the law rather encourages a proceeding of that character; but if he does it when he is in failing circumstances, with the purpose of securing his property from the grasp of his creditors, the law then steps in and vitiates and annuls the act, and says the property must be applied to the payment of the man's debts. And so it will be in the practical operation of this provision, and in this particular, under the rule of the law it is not alone.

I say again, that this idea of the practical operation of the present homestead law was impressed upon my mind by one of the ablest jurists on the Pacific coast—Judge Field, of California. We argued the matter over, and I raised the same objections which have been presented here, and the conclusions at which I arrived, and which I have now stated in this Convention, are in accordance with the views which Judge Field advanced to me on that occasion. I do not, therefore, claim any originality for this idea, but I do claim that this homestead law, proposed by my colleague's amendment, is not a bit more subject to abuse than would be the law which my other colleague (Mr. Collins) desires to see established. Then, again, the results practically, would not only be more humane, but decidedly more in consonance with the original object and design of a homestead law, which is to give to every man security for his castle—for his home—to assure him that the place where his children have been born, shall not, in any event, be taken away from him—to give him an opportunity to go on, without any fear that his little place will at last be stripped from him, to make all those little adornments which are so dear to his heart. If he plants a tree, and watches its growth and development, he is saved from the feeling that it may, after all, be taken from him, and that he is only doing it for the benefit of a stranger. If a man goes into business and fails, the law says that his homestead shall not be sold for his debts. This amendment says that the improvements may be sold, to pay for any expenses incurred in making such improvements, but the land which is improved, cannot be sold. A man cannot borrow money to improve his homestead, and expend it in that way, without the homestead itself becoming liable. The proposition is just the same as the homestead law of California, with the single exception that if the homestead increases in value beyond the price fixed by the statute

after a man has entered it, it shall not for that reason be snatched away from him. If it happens that a man's homestead increases to ten thousand dollars in price, then we say, not that it may be sold, as under the laws of California, and he may take his money and go into some mercantile business, or any other business, but that he must continue to hold it, if at all, as the asylum of his family; and if he does that, he shall retain his homestead still.

Now, sir, I do not say that our law is not going to be abused; but I will say this, that I do not believe that any man in the world, in his senses, would undertake, under such a provision, to improve his homestead at a time when he was on the eve of failure or bankruptcy. And no man would undertake it then, for the reason that the very act itself would be suspicious, and would be calculated to draw upon him, in hot haste, the suits of creditors, which would otherwise have been delayed. It is very rarely the case that any man fails, but what, to the last, he clings to the hope that the point where he is threatened with bankruptcy may be passed in safety, and he wishes to postpone the evil day as long as he can. And under this provision, when a man engaged in business should be seen at work improving his homestead to any extraordinary degree, it would at once attract attention, and lead to his financial destruction sooner than any other act which he could perform. The law may be abused to some extent, but if the money invested in business is taken for building and improving the homestead, the law would follow it there, and would compel the homestead to be responsible for the amount expended on such building or improvement.

I hope the substitute will pass, with the amendment proposed by the gentleman from Humboldt, (Mr. Banks,) and I am satisfied that we can, with such a provision, establish as beneficial a homestead system as that which has been in operation in other States for several years past. And I believe, where you will find one instance of its abuse, you will find at least a dozen instances of abuses under the homestead law of California.

PACIFIC RAILROAD.

Mr. WARWICK. I rise to move a suspension of the rules, and a postponement of the further consideration of the subject now before the Convention. My reason is, that Ex-Governor Leland Stanford, of California, President of the Central Pacific Railroad Company, is present, and I know it is the desire of a great many members of the Convention to be enlightened in regard to that important enterprise. I therefore move that the rules be suspended, and the further consideration of the subject be postponed for the present; and further, that Ex-Governor Stanford be invited to speak on the subject of the Pacific Railroad, and also to answer any questions which may be put to him upon that subject.

The question was taken, and the motion was agreed to.

REMARKS BY EX-GOVERNOR STANFORD.

The PRESIDENT introduced the Hon. Leland Stanford of California, President of the Central Pacific Railroad Company of California.

Mr. STANFORD. Mr. President and gentlemen of the Convention: I appreciate very highly the honor of the compliment which has been awarded me. I may say I am very grateful for it indeed. Devoting myself, as I have done for several years past, and as I am doing at the present time, to the construction of the Pacific Railroad, I do not desire merely to make a speech on this occasion; I desire rather that this interview shall partake more of the character of a free conference, because I am well aware that every gentleman present is earnestly desirous of securing the speedy construction of the Pacific Railroad; not only the construction of the road across the mountains, but also the construction of the road across the plains to some point that shall connect us on this coast with the Atlantic States. This is the great want not only of Nevada, but of the entire Pacific coast. It is not necessary, of course, that I should dilate at all upon the advantages to be derived by the people of this Territory from the construction of that road, either eastward or westward; it is better, I imagine, that I should confine myself to pointing out, as well as I am able, how these advantages may best be obtained. To do so, I will refer somewhat particularly, and as briefly as possible, to the position of the Central Pacific Railroad of California—its present condition, its prospects, its wants, and its means.

You are well aware, gentlemen, that Congress, by the Act of 1862, granted liberal donations in aid of the construction of the Pacific Railroad, limiting that aid only to the extent of one hundred millions of dollars. They also gave by that Act 6,400 acres of land to the mile for the construction of the road. Since that time, however, another Act has been passed by Congress, amending the first Act very materially, making it much more practical in its character. The first Act gave $16,000 per mile for building the road on the plains, and $48,000 per mile over the mountains, and also $32,000 per mile for passing through the Territories. That has been changed by giving double the amount of land per mile, which was first allowed the several companies. And further, by the former Act, the assistance of the Government was made to become a first lien on the road; but by the Act of last session the Government gives the same assistance in bonds per mile, but allows the railroad company to make a first mortgage upon the road to an equal amount; so that now when the Central Pacific Railroad Company receives $48,000 per mile in Government bonds, they are allowed to make a mortgage, which will be a first mortgage on the road, to the same amount, and they receive the Government bonds

to additions. And, as the base of the mountains has been determined by the President to be only about eight miles from Sacramento, it amounts practically to assuming $96,000 per mile towards the construction of the road, one-half in the bonds of the company, and the other half in bonds of the United States. This, of course, is a large assistance, but still it is not sufficient of itself to construct the road over the mountains, many miles of which will cost much more, and many little of it, from the present terminus, will cost much less. Therefore, you will observe, that the means of the company, so far as credit is concerned, to wit: the first mortgage bonds, of $48,000 per mile, of its own mortgage bonds, and the $48,000 per mile of the Government bonds, especially if in currency, is not sufficient to construct the road.

The question therefore arises, how shall the necessary means be obtained for building the road? After the first mortgage made on the road of $48,000 per mile, and then the Government assistance, becoming second mortgage bonds to the same amount, are expended, so far as borrowing is concerned, the means of the company must necessarily be exhausted, because third mortgage bonds would be of very little value if they were issued. Its dependence after that, therefore, becomes merely the stock subscriptions and the earnings of the road. But in this country, where money is worth two per cent. per month, or about that on the average, it can hardly be expected that there will be any large amount of stock subscriptions, especially where an immediate return in money is not, and cannot be anticipated. Therefore, so far as stock is concerned, we must depend upon foreign assistance, or subscriptions. A great point is to give confidence abroad in the stock of the company, so that in time, as the road progresses, and is doing a fine business—as no doubt it will—the company may entertain strong hope that there will be such confidence abroad in the stock of this railroad that people in communities where money is not worth more than five, six, or seven per cent., at most, per annum, will be willing to come forward and invest in it. On this side we have for some time reached the conclusion that it is vain to seek for further subscriptions, at present, to the stock.

Now then, gentlemen, I hardly know how to address you in reference to this subject without appearing to interfere, perhaps too much, in your deliberations; but I will say this, that if you desire to aid the Pacific Railroad—and I am quite sure you do—the proper and most effectual mode of doing so is by assisting it over the mountains. This railroad is not a mere California project, as some have alleged, nor a project which interests only people outside of your own Territory; on the contrary, it is an enterprise in which the people of this Territory are as much interested as any people in the world, and even more, for without it you are isolated. The people of California do not need a railroad to Nevada so much as the people of Nevada need a railroad to California. Now, my idea is, that the true way for you is to aid the railroad while it is passing over the mountains; and, that you may make yourselves entirely secure that whatever aid you give shall not be thrown away, or be misapplied, you can say that your aid shall not come in until the road has reached a certain distance from navigable waters, or from the Sacramento river; for instance, when it has reached fifty, or sixty, or seventy miles into the mountains. It will then materially cheapen the means of transportation, both of freight and passengers, and having done that you can say that we will give you so much, and then as it progresses this way, so much more for every ten miles further, until the amount which you are willing to appropriate shall be exhausted. You may feel entirely sure that, after the road has reached the summit, it will come this way as far and as fast as the means of the company and the labor of men will permit. So far as the Government aid is concerned, the Government assistance, with a mortgage of $32,000 a mile, will afford means amply sufficient to construct the road through your territory. Whenever it reaches the line, how fast it shall progress eastwardly is only a question how fast the track can be laid, because the grading on the line selected can always be kept far in advance of the track.

The State of California last winter provided by law for the payment of the interest on a million and a half of the bonds of the company for twenty years. This is a very great and material assistance, not only because it pays the interest, and so far relieves the company, but also because it tends to strengthen the credit of the company, and to give confidence to those who might desire to invest in the stock of the company, which is a very great point in any assistance of a public nature which may be given to the road.

The present company has constructed thirty-one miles of road, and it has purchased the iron and rolling stock necessary for sixty miles, all of which is paid for, and most of which has been delivered. The freight money alone, on the material shipped from New York to San Francisco, which we have paid out, has amounted to over $250,000 up to the present time. The company owes no floating debt; all of its contractors are paid; every article for the road, all of its supplies and the iron and the rolling stock for the first sixty miles, are paid for; and the company owes nothing except the first mortgage bonds of the road, amounting to a million and a half of dollars, not all of which, however, have yet been negotiated.

So far, this work has been done by the subscriptions of the individual stockholders, and the assistance derived from the subscription of the county of Sacramento, amounting to $300,000, and the subscription of the county of Placer, to the amount of $250,000. Most of the county bonds are yet owned by the company.

None of the State or National aid has yet been received by the company, but nearly all that has yet been done has been done by the individual subscriptions of stockholders. Thirty-one miles of first-class road have been constructed, and we are supplied with all the rolling stock and iron necessary for sixty miles. This, in brief, is the present condition of the road.

So far as the route is concerned, we took a great deal of pains to ascertain which was the best route. I myself, wrote a great many letters to different men who were acquainted with various passes through the mountains, and we made a reconnoissance of the different routes supposed to be practicable, and finally became entirely satisfied that the route selected is altogether the best; allowing the road to be constructed at much less expense, and in much less time than by any other route.

Now, allow me to say this—and I only know what the action of the Convention has been on this subject, by what I have seen in one of the papers—that you propose to give your aid to the road, only after it reaches the Territory, and then to the first road that shall reach it—allow me, very respectfully, to say, that in my opinion, that action, instead of aiding the road, is calculated to delay its construction, because you thereby raise a doubt as to whether or not this road—which Congress has aided, which the State of California has aided, which the counties of Placer and Sacramento have aided, and which the county of San Francisco will aid, either to the extent of $400,000, without taking stock, or by a subscription of $600,000—has a practicable route. And you also say to people abroad, when we go abroad to negotiate our securities, that there is a doubt whether we have the best route or not; and more than that, that there may possibly be a parallel and rival road constructed. To the extent to which you throw a doubt upon this being the only route, when we go into the market to negotiate our securities, or to sell our stock, to that extent you depreciate their value, and to that extent, of course, you prevent the construction of the road.

Now, gentlemen, if ever a railroad is to be built over the mountains—and I trust it will be; inside of three years, because I know it is entirely practicable—it will be that one which has received the National aid. Congress, while it donates in aid of the Pacific Railroad over one hundred millions of dollars, and gives it thousands of acres of land to the mile, operates through the various companies already in existence, one of which is the Central Pacific Railroad Company of California; and whatever is done to assist those companies, to that extent co-operates with the efforts of the General Government, and whatever is done to antagonize the efforts of one of those companies, to that extent, of course, antagonizes the efforts of the General Government to build the railroad.

This is, in brief, the view which I take of this subject. I do not desire to occupy your time by making a speech. It is a question of importance, it is time; but I think it better that we should have either an individual, and conversational meeting, than that I should endeavor to make any formal speech. I should be pleased to hear the views of members, and I will endeavor to answer any questions which gentlemen may see fit to put to me.

Mr. FITCH. I will ask Governor Stanford, what is the average estimated cost, per mile, of building the road from Sacramento to the State line?

Mr. STANFORD. The original estimate made by Mr. Judah, the chief engineer, who made the surveys, was, that it would cost between twelve and thirteen millions of dollars; that, however, was prior to any action of Congress giving assistance to the road, and it was not then contemplated to build so good a road as the act of Congress requires. That requires a first-class road, in every respect. A road might be built which would, to some extent, answer the purposes of a railroad, at much less expense. Since that time there never has been a complete estimate of cost for a first-class road, such as we are building.

Mr. DeLONG. I will ask the Governor this question. What do you suppose the bonds of the State of Nevada for $2,000,000, at seven per cent a year interest, could be negotiated for abroad, without a railroad running to our borders?

Mr. STANFORD. Really, Mr. DeLong, without a road at least contemplated, they would be very low in the market, in my opinion.

Mr. DeLONG. Do you think they would sell, in the aggregate, for more than $750,000?

Mr. STANFORD. Yes, sir, I think they would realize over that amount, and certainly with the prospect of a railroad; because, the moment it is certain that a railroad will be constructed, as it is well known that you have mines here which that road will supply and develope, the credit of the State would be enhanced. In view of the number of mines now undeveloped, or partially developed, the fact that the road is to be built, would give your bonds a very good standing in the market.

Mr. DeLONG. How far from the present terminus of the road, is the summit?

Mr. STANFORD. It is one hundred and four miles from Sacramento to the summit.

Mr. DeLONG. Then it is forty-four miles from that point on the road to which you have the necessary supplies of iron and rolling stock to the summit. Is there only one summit on your route?

Mr. STANFORD. There is only one to pass over. Through the eastern summit the railroad follows the outlet of Lake Tahoe. It comes through the eastern summit with a descending grade of forty-two feet to the mile.

Mr. WARWICK. I desire to ask a question. Do you not think that if the rate of interest on the negotiable paper of the State of Nevada

were you limited at seven per cent, it would be worth more easily negotiated than at the rate proposed, which is seven per cent., and also that it would bring a better price?

Mr. STANFORD. Oh, certainly.

Mr. NOURSE. Suppose we could not pay—and it is well known that we could not—seven per cent. interest, would it make the bonds any more negotiable to fix the rate of interest at ten per cent.?

Mr. STANFORD. In that case, I should suppose not.

Mr. FITCH. Does not Congress restrict the rate of dividends on your stock to ten per cent.?

Mr. STANFORD. Whenever it is above ten per cent. Congress reserves the right to restrict and limit it.

Mr. FITCH. I suppose that is the difficulty in regard to the subscriptions in California.

Mr. STANFORD. Not altogether, Mr. Fitch. The difficulty is this: This company has the right to continue the building of this road until it meets the other road coming from the East, and of course, there will be no cash dividends until that time, as all the means of the company will be used in pushing the road toward the East.

Mr. COLLINS. I understand that California, by her enactments, agreed to pay the interest on the bonds of the company to the amount of a million and a half of dollars, for twenty years to come.

Mr. STANFORD. Yes, sir; the interest being at seven per cent. per annum.

Mr. COLLINS. The State does not propose to pay the principal, then?

Mr. STANFORD. No, sir; the company pays the principal. The payment of interest by the State, makes the bonds very desirable, and it is practically about as much assistance to the company, as if the State paid the principal. It not only makes the bonds good, but it strengthens the stock of the company.

Mr. COLLINS. What is the highest grade in crossing the summit, which the company will have to overcome? I mean the maximum grade; how many feet per mile?

Mr. STANFORD. The maximum grade is one hundred and five feet to the mile.

Mr. COLLINS. You now have thirty-one miles completed. What is the highest grade on that distance?

Mr. STANFORD. We have four miles of the maximum grade of one hundred and five feet, and there are three miles of between eighty and ninety feet grade to the mile.

Mr. COLLINS. I believe there is to be an extensive tunnel somewhere near the summit; is there not?

Mr. STANFORD. The longest tunnel on the route, according to our surveys, is one thousand and fifty feet, and that will take us more time than any other one mile of the road; but our engineers are confident that they can run it inside of fifteen months.

Mr. COLLINS. Is that at the summit?

Mr. STANFORD. No, sir; it is about seventy-eight miles from Sacramento.

Mr. COLLINS. What is the number of tunnels that the company will have to make?

Mr. STANFORD. I do not know. The tunnels which we originally contemplated, we find on a more careful survey, we generally thrown out, and this tunnel of one thousand and fifty feet our present engineer thinks can be thrown out entirely, by a little more curve.

Mr. COLLINS. Without any more grade than one hundred and five feet to the mile?

Mr. STANFORD. Yes; we limit the grade to that; we are limited by the Act of Congress, to that of the Baltimore and Ohio road, the maximum grade of which is one hundred and sixteen feet to the mile; but we find that it is not necessary to have any grade of more than one hundred and five feet to the mile.

Mr. TOZER. I understand you to say that no part of the Government aid has thus far been used in the construction of the road?

Mr. STANFORD. Not a dollar.

Mr. TOZER. Then what are the contingencies? Can you depend upon the aid being granted to this road rather than to any other?

Mr. STANFORD. Yes, sir; because, in the Act of Congress, the companies to build the road and receive the donations are specified by name. The Central Pacific Railroad Company was organized under the laws of the State of California, and was in existence anterior to the passage of the act of Congress; and if you will observe—I have the act here—that company is recognized in the act of Congress, and the five companies named are the only ones that, under the act, can derive any aid—three on the eastern end, including the branches there, and then the Union Company, and the Central Pacific Company, on this end. These are the only ones which can receive any of the aid. The donations are specifically made to them. The Central Pacific Railroad Company has the right to build eastwardly, until it meets the other companies.

Mr. TOZER. How soon, then, do you think the road on this side can demand and receive any portion of the aid of the Government?

Mr. STANFORD. Our company is in a condition to demand a portion of the aid immediately. Under the old law, which provided for the construction, after forty miles had been completed across the plains, it was provided that there should be an appointment of Commissioners, and until such Commissioners had been appointed, and had reported, we could receive no assistance from the Government; but it allowed the bonds to be issued for every twenty-five miles in the mountains. Now, our road commencing at Sacramento, runs into the mountains very soon, but there is no provision for granting us aid until we shall have forty miles constructed. But the act of last winter, I understand, provides for the appointment of the Commissioners at once, and then we shall get the aid immediately.

Mr. FITCH. I understand you to say that $48,000 per mile will be received from the Federal Government; that the company have permission to raise $48,000 per mile more on the road, in anticipation of the Government aid, besides the aid of a million and a half from California, and the aid of $400,000 or $600,000 from San Francisco, and the aid also of $200,000 from Sacramento County. I understand that you have all this aid from the counties, as well as from the State, and that in the expenditure of this aid, you are restricted to the State line.

Mr. STANFORD. The Pacific Railroad Company, so far as its first organization is concerned, had only the right to build to the State line. It was only organized for that purpose, but by the act of last winter, we have the right, so far as the State could confer it, to build eastwardly, and the National Government has also conferred the right to do so.

Mr. FITCH. I understand that the money given by San Francisco, and by the State, and by those counties, can be expended either within or without the State of California, as the company please.

Mr. STANFORD. Yes, sir; the entire subject is under our control.

Mr. FITCH. I believe you did not state the amount of the estimated cost per mile.

Mr. STANFORD. It will probably cost at least twelve or thirteen millions of dollars for the construction of a first-class road to the State line.

Mr. DeLONG. Inasmuch as the appropriation heretofore proposed by the Convention is not agreeable to you in its present form, and inasmuch as, if we make a direct issue of three millions of dollars in bonds, it will not be worth much—taking either horn of the dilemma—what is it the wish of the company we should do? Let you alone?

Mr. STANFORD. I would prefer that you should let us alone rather than provide that the State shall grant assistance to the first road that comes to the State line, and thereby impair confidence in this route.

Mr. DeLONG. We want to stimulate strife.

Mr. STANFORD. You can hardly expect to get two roads built across the mountains, Mr. DeLong.

Mr. DeLONG. We do not want more than one, but we want that as soon as possible.

Mr. STANFORD. There is no doubt but what the road that comes across the mountains will be that one which the Government aids, and this is the only company now organized with a view to constructing a road over the mountains. There is no other company organized for that purpose, and nobody else has proposed to construct a road further towards the Territory than Placerville. So far as our present information goes, we do not know that any other road will ever attempt to cross the mountains.

Mr. DeLONG. Then I understand you to say that you prefer that there should be no donation at all, rather than to limit it as this proposition is now limited?

Mr. STANFORD. I do not know exactly what you have done.

Mr. DeLONG. We propose to give fifty thousand dollars a mile for every mile of railroad that shall be built within our Territory, to the company that shall first construct a road to this Territory, which shall connect us with navigable waters. That proposition is contained in our constitutional provision as it stands now. We have either got to make the appropriation outright, to leave it for the company to call for the first appropriation in bonds which shall first reach our borders, or else to make no appropriation at all. Which of the three measures would you advise?

Mr. STANFORD. With the exception of the implied doubt as to the company which has the ability to construct the road, there is no particular objection that I see. Of course, when we get our road over here, we should be very glad to receive this aid to construct the road along through the Territory, as our hope is not to be delayed too long in getting across the mountains. But, as I said before, the loan is not really necessary to get across the Territory. The Government aid being a second lien, makes the mortgage bonds of the company good, and that insures the completion of the road across the Territory as fast as the track can be laid, so soon as once the mountains are overcome.

Mr. DeLONG. Then the proposition would suit you very well if that part were stricken out which provides for giving it to the first company, thus leaving out the doubt as to whether or not there can be another company or road which is likely to cross the mountains first.

Mr. STANFORD. That would suit us, so far as going through the Territory is concerned, but really that is no concern to the Pacific Railroad Company, because the company is confident of its ability to push the road after it once reaches the State line, as then the difficulty of crossing the mountains will be entirely surmounted.

Mr. DeLONG. Then you ask that whatever appropriation is made shall be made so as to be available as soon as possible, and so as to allow you to use it on the mountains or elsewhere, as you please.

Mr. STANFORD. Yes, sir.

Mr. DeLONG. Would it be any advantage to you to appropriate three millions in bonds that would not sell for over one hundred and fifty thousand dollars?

Mr. STANFORD. It would only aid the road to that amount, and that would be too great a sacrifice to make; but I think, nevertheless, that with the prospect of a railroad reaching the Territory at an early day, we may be quite confident that those bonds would stand well in the market, because not only yourselves here,

the people in California, and in fact the whole world, have a very high estimate of the natural resources of your Territory; and the moment you have a reasonable means of communication for freight and passengers, you must have a population, and the bonds of the State of course will be valuable. But after all, while we are coming over the mountains is the time to give us effectual assistance. As to whether the bonds should be issued or not, is another question. You are as much interested in the bonds as the railroad company is, but if you prefer not to issue the bonds, I can only say that the people of the State of Nevada would be very welcome to take stock in the road, and they could assist us in that way.

Mr. DuLONG. We should object to this issuing of three millions of dollars in bonds, if it is not going to do considerable good.

Mr. STANFORD. You could give the aid in a very efficient and acceptable shape by providing for the payment of the interest on the bonds of the company, as California has done.

Mr. DuLONG. To what amount?

Mr. STANFORD. As much or as little as you choose.

Mr. KINKEAD. When will the road be finished as far as you have the material now on hand?

Mr. STANFORD. During the coming winter, we expect. Allow me to state why it has not gone forward faster this spring and summer. We have as yet received nothing from San Francisco, nor from the National or State aid; neither have we made a mortgage such as was contemplated by the California Legislature of last winter. There is a million and a half, of course, of very desirable securities which we could place in the market, but we have not done so because we did not know exactly how it should be done until Congress should take the action which it did take at the last session. Now, as soon as we receive the bill passed by Congress, and get all the details, we shall make that mortgage, and of course we shall push the work forward. It will take only about six months to complete that portion of it after we fairly set to work.

Mr. KINKEAD. That is, if you get the means.

Mr. STANFORD. With the State aid, and our means, we are abundantly able to complete the sixty miles.

Mr. FITCH. Do you propose that these bonds which you are about to issue shall be first mortgage bonds?

Mr. STANFORD. Yes, sir.

Mr. FITCH. Then the State guarantees only the bonds?

Mr. STANFORD. No, sir. The State only pays the interest for twenty years. It actually pays that interest, so that, in addition to the credit of the company as a guarantee, we have for the interest the guarantee of the credit of the State.

Mr. KINKEAD. The State does not pay the principal?

Mr. STANFORD. No, sir. That is to be paid by the company.

Mr. PARKER. Is there any company which has a charter from the eastern line of California, already granted by the Nevada Legislature through the Territory?

Mr. STANFORD. No, sir.

Mr. HAWLEY. That is a question which I wished to ask. I do not quite understand whether any contingency could arise by which the aid granted by the United States could be received by any other company.

Mr. STANFORD. No, sir; except that Congress may repeal or modify the act, which is not very likely. Under the act of this winter, however, they have reserved the right to repeal or modify it.

Mr. HAWLEY. Then no other company can receive it on the western slope?

Mr. STANFORD. No, sir.

Mr. HAWLEY. That question arose on the framing of the language of the section. The language employed was "same one company," and I opposed it because I thought it was leaving the matter open for the purpose of exciting a contest between the companies. So far as I am concerned, I was willing that the aid should be restricted to the company which you represent, provided there could be no such condition of affairs that the Government aid could go to some other company.

The PRESIDENT. I would like to ask Governor Stanford a question. How far has the line of the road been surveyed or located?

Mr. STANFORD. To the State line, or rather to the Big Bend of the Truckee.

The PRESIDENT. Do you regard the summit as the State line?

Mr. STANFORD. No, sir. We strike the State line about four miles from where the Henness Pass road crosses the Truckee River.

The PRESIDENT. Do you recollect the distance in miles?

Mr. STANFORD. The distance, as we ran it originally, was one hundred and forty-four miles. To the summit the distance was one hundred and four miles.

The PRESIDENT. It has not been surveyed and located beyond that point to the east?

Mr. STANFORD. Yes, sir, to the Big Bend of the Truckee.

The PRESIDENT. What is the capital stock of the company?

Mr. STANFORD. Eight millions of dollars.

The PRESIDENT. How much has been subscribed?

Mr. STANFORD. Between eight and nine hundred thousand dollars by the individual stockholders, two hundred and fifty thousand dollars by the county of Placer, and three hundred thousand dollars by the county of Sacramento.

The PRESIDENT. What amount of that capital has been actually paid in?

Mr. STANFORD. Between five and six hundred thousand dollars. The Government did, you will see very readily, see it to be manner be diverted from the Central Pacific Railroad, except through its own hands. Under the recent Act of Congress, the time for construction has been extended so as to require twenty-five miles to be completed next year, and twenty-five miles the year thereafter; and it is for the interest of the company to push it forward as fast as they have the means to do so, and the earlier it is completed the better.

Mr. DeLONG. Then I understand that the company would rather we should guarantee the interest on the bonds of the company, than to give the bonds of the State?

Mr. STANFORD. No; we would rather have the bonds.

Mr. DeLONG. If we give you two hundred and ten thousand dollars annually, as a donation, which is the interest on three millions of bonds at seven per cent, that would be double the amount which California has given, or nearly so.

Mr. STANFORD. Allow me to say, that I have entire confidence that the stock of the company will eventually be very valuable, and I cannot ask for the assistance of any State, except so far as it may be necessary to secure its construction, and if the Territory of Nevada or the State of Nevada, when it becomes a State, agree to pay the interest on the bonds, which would make them about as good in the market as if the State gave her own bonds—in other words, it would furnish about the same amount of means toward the construction of the road—that is really all the company can ask. We do not ask anything to save the stockholders—nothing except to inspire confidence; to make the credit of the company good abroad.

The PRESIDENT. The bonds of the company bear interest at seven per cent, and the Sacramento and Placer County bonds a like rate, do they not?

Mr. STANFORD. No, sir; the bonds of Sacramento and Placer Counties bear eight per cent. interest.

Mr. EARL. Where is the western terminus of the road?

Mr. STANFORD. Under the organization of the company, it was the State line.

Mr. EARL. No, no! I mean the western terminus.

Mr. STANFORD. Oh, the western terminus; under the act of Congress, it is a point at or near San Francisco, or the navigable waters of the Sacramento river.

Mr. EARL. Is not the terminus to be at Goat Island?

Mr. STANFORD. I am not fully posted on that. I have not seen the amended bill, but I think it provides for an organization to run a road from Sacramento to Goat Island. The company has a right to construct a railroad to San Francisco, if it chooses to do so.

Mr. EARL. By this language, if it be construed that this is the road which is to get the land from the Government, will not the decision as to whether you would get the aid from the counties, and also from San Francisco?

Mr. STANFORD. So far as relates to the construction of the road to San Francisco, there may be some doubt; but over the mountains, there is no doubt whatever, because the act of the Legislature provides specifically that six hundred thousand dollars shall go to the Central Pacific Railroad Company, and four hundred thousand dollars to the Western Pacific Railroad Company.

Mr. CHAPIN. What is the distance from the head of the Truckee Valley to the summit, or somewhere there?

Mr. STANFORD. I think it is some forty-two or forty-three miles.

Mr. CHAPIN. If that summit were the State line, all that forty miles would be in the Territory?

Mr. STANFORD. Certainly; the line of the railroad follows the Truckee, down a rather crooked course, for a great many miles. We found that some gentlemen were constructing a wagon road through there, and their original idea was to bring it down to the Truckee directly, but they found that the distance would be no less than by taking the Hennessy Pass route, and striking across Dog Mountain. All the difficulty is on the mountains. There is an opening in the mountain range there, and from there down to O'Neal's there is no trouble about the road. All the difficulty is in the mountains, and it is all passed, when you get to the State line.

Mr. COLLINS. I understand that the road would have been completed before this time, but for the want of funds?

Mr. STANFORD. Yes, sir.

Mr. COLLINS. I understand there has been some embarrassment in the operations of the company, or that the progress of the road has been delayed?

Mr. STANFORD. Only delayed; the company has not been embarrassed.

Mr. COLLINS. I hear it has not gone ahead as fast as it would have gone, if there had been funds enough?

Mr. STANFORD. No, sir. You see we are practically more than six months removed from the source of supplies. The ground was broken for the construction of the road a year ago last January, but we had to go East and purchase iron and rolling stock; and from the time we started, independent of the time we were necessarily delayed in negotiating, somewhat more than six months were consumed in the purchase and transportation of the materials. Indeed, some materials which we purchased a year ago, and paid for at the time, in the securities of the company, have not yet arrived. We were delayed some time in getting our locomotives. The Government was requiring the services of most of the effective

here is building locomotives for its own use, and we could only get them at such times as they could be afforded by the Government.

Mr. COLLINS. Do you think, if this State shall give bonds for one, two, or three millions of dollars, or agree to pay the interest for an indefinite period of time on the bonds of the company, that that would really facilitate and hasten the completion of the road across the mountains?

Mr. STANFORD. It would, very much.

Mr. COLLINS. Probably how much time would it forward the completion of the road?

Mr. STANFORD. Well, I feel entirely confident that if the State shall pay the interest—not guarantee it, because I do not consider that that would be any very great assistance, as we never intend to have the bonds go to protest, and a guarantee therefore would be very little assistance—but if the State paid the interest it would be a very great assistance, and practically nearly to the same extent as though the State issued her own bonds. You will consider this, that we have thirty-one miles already constructed and paid for, and the rolling stock and iron for sixty miles already provided; and we owe nothing for all that, except a few of the first mortgage bonds, a million and a half of which we have issued, but only a portion of that amount has been negotiated, and everything else in the way of assistance is untouched. Besides, we have the interest on our bonds to the amount of one million and a half of dollars paid by the State of California.

Mr. KINKEAD. Is that a donation?

Mr. STANFORD. Yes, practically, with the exception that we do some services for the State as a consideration. Things which are to go to the State Fair are to be carried free, and arms, and munitions of war, etc., are to be transported free. We issue our own bonds whenever we please, and we are able to put the bonds into the market at once, and then almost immediately we will be able to derive the benefit from the Congressional aid on the thirty-one miles which we have completed. We will have that aid to assist us in completing the work. We can make our first mortgage bonds equal to forty-eight thousand dollars per mile on the thirty-one miles completed. There are, besides, the four hundred thousand dollars which we are about to receive from San Francisco, if the compromise now proposed shall be carried out in good faith, as I think it will be; and if it is not carried out, then we shall receive six hundred thousand dollars in bonds from San Francisco, giving in return six hundred thousand dollars in stock; and these are the immediate assets of the company for the prosecution of the work. Now, if this Territory, on becoming a State, shall promise to pay the interest on the bonds of the company to any extent, to that extent the bonds would become very marketable. They would be good securities, and would bring a good price in the market at once; and, in addition, you will see the advantage of all these donations made directly to the company, by strengthening its standing abroad. The effect is, that you make the stock desirable. Our idea is to push forward the work as rapidly as possible, and when we get it completed for a distance of seventy or eighty miles, we shall have demonstrated not only the practicability of the enterprise, but also that it has a practical value as an investment, so that we shall have no difficulty in selling our stocks, and thereby realize a large amount of funds with which to finish up the road.

Mr. NOURSE. What effect upon any guarantee or agreement to pay interest on the bonds of the company, would the exemption of mines from taxation have?

Mr. STANFORD. I do not know what would be your means of raising a revenue in that event.

Mr. NOURSE. Are you much acquainted with the means of raising revenue which the Territory possesses?

Mr. STANFORD. I am somewhat.

Mr. NOURSE. Have you noticed the expenditures and the income for the last year, under the territorial organization?

Mr. STANFORD. Well, not particularly.

Mr. NOURSE. Are you aware of the fact that, with the Federal Government paying the federal officers, we have already run behindhand—that we are already two hundred and fifty thousand dollars behindhand, independent of city and county indebtedness?

Mr. STANFORD. I was not aware of it.

Mr. NOURSE. Are you aware that the expenses for fourteen months, which includes only sixteen hundred dollars of interest, amount to nearly six hundred thousand dollars, with an income of only forty-four thousand dollars?

Mr. STANFORD. I was not.

Mr. NOURSE. With these facts carried before Wall Street brokers, with this fact into our financial affairs, what do you think would be the probability of negotiating our bonds, at a figure to make it a paying operation?

Mr. STANFORD. I do not think that showing would materially affect the bonds.

Mr. NOURSE. Suppose you had the further fact that, notwithstanding the small amount of income, the people of Storey County—our most wealthy county—were taxed two dollars and seventy cents on every one hundred dollars worth of property for the past year, and that out of all that, we get only a small per centage for State purposes?

Mr. DeLONG (in his seat). Oh, that is nothing for a Sacramento man to consider!

Mr. NOURSE. Suppose that fact were known, and it were also understood that we, as a Territory, had run behindhand two hundred and forty-four thousand dollars, and that the Territory had only an income of about forty-four thousand dollars a year—suppose, I say, it were known that the expenses were so much

larger than the income, as shown by these figures—what would be the advantage to you of that agreement on the part of this State to guarantee, or to pay, the interest on your bonds?

Mr. STANFORD. I think you hardly get the case fairly. If the revenues of this State were not to be largely increased, of course there would be no great value in the securities. But so far as the rate of taxation is concerned, you should consider it in proportion to the rates paid for the use of money, which is often three and four per cent., in this country. I believe two and a half per cent. is about the usual monthly rate here, and compared with that, the rate of taxation is very light. It cannot be more in proportion than one and a half, or two per cent. per month interest, and yet there are cities and towns where people pay taxes amounting to three, four, and five per cent.

Mr. NOURSE. Would it not be of more advantage to your company, as regards giving you credit abroad and assuring the desirability of your stock, if it were known that after, or soon after, the railroad should reach the State line—which would develope our resources and give us a population, thereby rendering the State able to do something—the State would give you outright the amount of three millions of dollars, at the rate of fifty thousand dollars a mile—that the State would not lend, but give it outright? Would not that help you much more than it would to give you our bonds now, or as soon as we get to be a State, and with our present condition of finances?

Mr. STANFORD. I think not; because abroad, where most of the securities must be negotiated, the great point is to inspire confidence that the road will be constructed over the mountains, and there will always be a doubt until the ability of the company is made apparent. It is necessary not only that the company should have the ability, but also to make that ability apparent to the parties with whom we have to deal.

Mr. HOVEY. I would like to correct the gentleman from Washoe (Mr. Nourse) in one respect. The county of Storey alone has paid fifty-seven thousand dollars into the Territorial Treasury during the last year.

Mr. CHAPIN. With many thanks to Governor Stanford for the valuable information he has given us, I suggest that we now proceed to our regular business.

Mr. COLLINS. I propounded one question to the Governor, but his attention was diverted from it so that he did not answer it. My question was this: How much, by the appropriation or provision for the loan of the credit of the State, or a guarantee of the bonds of the company by the State, say for a certain definite period, to an amount of one, two, or three millions—how much by that means would we be enabled to hasten the completion of the road to the State line? Would it hasten it one year, a year and a half, or six months? For instance, suppose when it reaches a point sixty miles this side of Sacramento, we guarantee the payment of seven per cent. on one million, when it arrives at a point eighty miles this side of Sacramento, a million more, and when it arrives at a distance of one hundred miles from Sacramento, or at the State line, a million more?

Mr. STANFORD. Of course, I can only approximate to it, but I will say this: that with the knowledge of the fact that this State would give the interest upon a certain amount of bonds, we could proceed with entire confidence in the expenditure of the money raised on the bonds which we are authorized to negotiate at the present time. By the time the road is constructed up to about sixty miles from Sacramento, the balance of the road, to fifteen miles from the summit, might be ready for the track, and when that is done there is no one section that has any obstacle to delay it. We could proceed at once to use the present securities with entire confidence, knowing that by the time they are exhausted, we shall have reached a point where we may receive the aid from this State; and these bonds would be negotiable in the market. Therefore, I think that with that assistance, we could construct the road as fast as any adequate amount of means would permit, and we could finish it inside of three years, probably.

Mr. COLLINS. Do you think that this aid would give us the road one year sooner than we could have it without?

Mr. NOURSE. Do you mean by the payment of the interest, or the agreement to pay it?

Mr. COLLINS. I mean not an agreement only, but the actual payment of the interest.

Mr. STANFORD. I must say that I could not say that it would make a difference of a year. It might make more difference, but I should be surprised if by some means we do not push the road forward to this Territory inside of three years. It is my ambition to do so. But the great object, as I have said, is to inspire confidence abroad.

The PRESIDENT. Do not you think that this road will be constructed without any aid from this Territory?

Mr. STANFORD. I think it will be, but perhaps not so soon.

The PRESIDENT. Then with this guarantee of interest at seven per cent. on the bonds of the company, how much sooner could that road be constructed to the State line, than it would otherwise be?

Mr. STANFORD. It is very difficult for me to say, because so much depends upon our foreign relations, and the condition of the whole country. The standing of our bonds and the standing of the Government bonds will have to be governed by events in the future, and of course, what will be our condition in the future it is impossible to say, nor how our securities are going to stand within a

certain length of time. But this is certain, that if this State comes in and lends her aid, to the extent that she gives that aid, it will help the road; and more than that, it will strengthen the bonds of the company abroad, and also the stock. For instance, if the road were to cost three millions, with a million and a half of aid, you will enable us to build the whole of it, because the amount required to build a portion of the road secures the construction of a good deal more. Whatever is donated becomes a security for nearly an equal amount in addition, so that the donation of a million and a half from the State, becomes equal, so far as the construction of the road is concerned, to nearly three millions of dollars. Then in addition to that, the road having received the donation, makes the stock of the company more desirable in the market, and in that way the resources of the company and its means to build are increased. I may say, that a million and a half donated by the State, equals twice that amount toward the cost of the construction of the road.

The PRESIDENT. Then three millions would be equivalent to six millions toward the construction of the road.

Mr. NOURSE. I wish to ask one more question. What is the shortest radius of any curves on your road, and whereabouts do they occur?

Mr. STANFORD. As to the curves, our shortest is a five hundred feet radius, although we run out of Sacramento, at present, with a curve of two hundred and twenty-five feet radius.

Mr. NOURSE. Do these curves come upon heavy grades?

Mr. STANFORD. Some of them; yes, sir. Of course we avoid having curves upon sharp grades as much as possible, but we reach the elevation of seven thousand and thirty feet in a distance of one hundred and four miles, so that the grade is very regular. We have curves of this kind for at least four miles, on the maximum grade, on the part we are now running, but only one engine is required to surmount those curves. The locomotive Pacific, which is not so large as one we have coming out, drew up to Newcastle, one train containing over four hundred passengers, with only one hundred pounds of steam. There were eight cars, and each had about sixty passengers.

Mr. NOURSE. One engine hauled the train up the one hundred and five feet grade?

Mr. STANFORD. Yes, sir; I was on the engine at the time. We had only one hundred pounds of steam on, and sometimes a little less. We had certainly over four hundred passengers on the train.

Mr. COLLINS. One object in postponing the issue of the bonds was the idea that the State would be in a better condition, at a future time, to meet the issuing of so large an amount, than it is at present. As you rather demur to the action of the Convention, I would ask which would be most agreeable to the company—for instance, to issue the bonds from time to time as the work progresses on the other side, until the road reaches the State line—to make the payments from time to time until a million and a half is paid, or until the road is completed; or to pay the interest on the million and a half of bonds as they are issued by the company?

Mr. STANFORD. The object is to get across the mountains. I will say this, that if the State is not to issue the bonds until seventy miles of road are completed, the State will then certainly be in the receipt of considerable benefits from the road. In the next place, when we reach the seventy miles, and make the proper proofs, then only the company may issue the bonds guaranteed by the State, and the first instalment of interest probably would not be payable under six months at any rate from that time, so that it would necessarily be a considerable time before the State could be called upon to pay anything at all. And long before she would be called upon to pay the bonds, she would be deriving far more than an equivalent in the way of benefits from the road. For instance, now there are six daily coaches running from the termini of the railroads which run from Sacramento towards this Territory, and the probability is that these coaches take fifty passengers up, and carry fifty passengers down, at a cost of about twenty-five dollars for each passenger, so that there must be two thousand five hundred dollars a day paid out by the people of this Territory for passage alone. Now, the most we could charge, under the laws of California, would be ten cents a mile for passengers and fifteen cents a ton for freight, and the Territory would save on passenger travel alone not less than the handsome sum of three hundred thousand dollars a year, even if the railroad company should charge the maximum prices allowed by the law of the State of California.

Mr. CHAPIN. Have you any reliable data in regard to the amount paid for freight, and for passengers during the last year, to and from California?

Mr. STANFORD. We have got such estimates as we could on that subject, from several firms in Sacramento, and also in regard to the teaming across the mountains. The amount paid out in Sacramento for freights the past year, was from ten to twelve millions of dollars; and Mr. Swain, a large wagon-road owner, estimates it at twelve millions. I know that Whitney & Co. of Sacramento, some time along last fall—in November, I think it was—showed us their books, and also made an affidavit to the effect that they had paid out for goods forwarded from there during the season, over one million seven hundred thousand dollars. That was from one single firm. D. W. Earl & Co. have paid out probably the same amount.

Mr. NOURSE. Are not these the principal firms?

Mr. STANFORD. There are several firms which do about as large an amount of business.

Mr. DeLONG. And many goods are sent here from Marysville, also.

Mr. STANFORD. I did not take any account of the Marysville trade, though I know there is a vast amount of goods shipped from there to the Territory. Taking the amount of freight brought by the several routes last year as a basis, the railroad line would probably save to the Territory at least eight or ten millions of dollars a year. That is according to the best data we can obtain. And it would save about two-thirds on the bullion shipped. I do not remember the exact amount of bullion. We have had the wagon roads estimated from the tolls received.

Mr. NOURSE. You add them to the estimate of the amount shipped in Sacramento.

Mr. STANFORD. No, sir; that is independent of those estimates. Mr. Swain's estimate of the whole was twelve millions of dollars.

Mr. NOURSE. Probably, on the other hand, Whitney & Co. and D. W. Earl & Co. forwarded about a quarter of the whole amount shipped last year.

Mr. STANFORD. Probably not a quarter, as a large amount comes also from Stockton, even on the produce of the farms—barley, hay, a great deal of flour, and some merchandise—which does not come by that road at all.

Mr. TOZER. And a great deal comes by the Henness Pass route, does there not?

Mr. STANFORD. A very great deal, and a great deal also from farms along the road.

Mr. TOZER. Could not most of the amount proposed to be guaranteed be saved to the State in the way of fuel?

Mr. STANFORD. I should say it could. You possess in your Territory, boundless resources; you have plenty of mines which would pay reasonably, were the cost of working them reduced to a smaller amount; but you have not many mines which will pay, with the present cost of the reduction of the ores. The consequence will be, without a railroad, that very soon the production will be confined to the principal mines; prospecting will die out, and your population will come to consist only of those who are engaged in working the more valuable mines, and those connected with them. But when you can transport your freight and your fuel at reasonable rates; when you can send your ores to the Truckee, or get your wood brought cheaply to your mines, you can then support an almost indefinite amount of population.

Mr. PROCTOR. How far has the road progressed already?

Mr. STANFORD. Only thirty-one miles as yet.

Mr. PROCTOR. Are there any men at work on the road now?

Mr. STANFORD. Yes, sir; a small gang of men at Auburn, where we have a heavy cut. We have a few men at work upon that.

I feel myself greatly obliged to gentlemen of the Convention for the kind attention they have given me, and will trespass no further upon their time.

Mr. CHAPIN. I move a vote of thanks to Gov. Stanford for the valuable information he has given the Convention.

The question was taken, and the motion was agreed to.

EXPENSES OF THE FIRST CONVENTION.

Mr. KENNEDY. I desire to rise to a question of privilege, and will call it a question of privilege, on behalf of the former Convention. I wish to correct an error made by the gentleman from Washoe, (Mr. Sturtevant,) who stated in his remarks to-day, that some twenty-seven thousand dollars of the bills of the last Convention had been audited and allowed by the last Legislature.

Mr. STURTEVANT. Oh no; I beg the gentleman's pardon; they were presented—not allowed. I was on the Committee on Claims in the Legislature. The amount is perhaps a little less than that, however.

Mr. KENNEDY. In order that this matter may appear properly in the morning papers, I wish to correct any misapprehension which might otherwise arise in regard to it. The entire amount of bills allowed by the last Legislature for expenses incurred by the last constitutional Convention, was four thousand one hundred and ninety-four dollars, which being in addition to the amount appropriated by the previous Legislature, makes the total expense of that Convention seven thousand one hundred and ninety-four dollars. I have no doubt that if the statement of the gentleman from Washoe were allowed to go forth unexplained, it would be asserted, and used as an argument against the adoption of the Constitution, that the last constitutional Convention incurred the enormous expenditure of twenty-seven thousand dollars; and it was for that reason that I asked to make this correction. The entire expense of that Convention was only seven thousand one hundred and ninety-four dollars, taking the scrip at its par value.

Mr. STURTEVANT. I am sorry that I should have been misunderstood; but it is a difficult matter for me to get up here and explain everything connected with that subject so that all can understand it, though I claim to be as bright as the average of men. I will say, however, that these claims to which I have referred, were all put in to be audited, and I will refer the gentleman to a few of the items. One was the claim of the *Old Pike*, amounting, I think, to six hundred dollars. Another paper had a claim of seven hundred and forty-eight dollars; and the Esmeralda paper put in a bill for six hundred dollars.

Mr. DeLONG. Were those the charges of single newspapers?

Mr. STURTEVANT. Yes, sir. And I think, in fact, that pretty nearly every paper in the Territory sent in a large bill. But all of these bills, or nearly all of them, were knocked in

head, though one bill was allowed, to the Fireman, Vance, for printing those same documents which we are now using.

Mr. KENNEDY. I understand that one of the bills which that paper sent in was for printing the Constitution of Oregon; was that bill allowed?

Mr. STURTEVANT. No, sir. Pretty nearly all those bills were knocked in head. I think I could go and hunt up the bills now, and show what was done with them and the amounts, but is is probably not worth while to occupy the time of the Convention with them.

Mr. KENNEDY. I wish to make one further statement, and that is, that no bills in behalf of the members of that Convention were ever presented.

Mr. DeLONG. I hope the members of the former Convention will not occupy too much time in apologising for the errors they may have committed.

LEGISLATIVE DEPARTMENT—THE HOMESTEAD.

The Convention resumed the consideration of Article IV, entitled Legislative Department, the question being on the motion of Mr. Tozer, to recommit Section 30 to a special committee of three, with instructions to amend by striking out the section, and inserting in lieu thereof the following:—

SEC. 30. The Legislature shall provide by law for exempting from forced sale, under any process of law, a homestead for families, which shall not be alienated without the joint consent of both husband and wife, when that relation shall exist, said homestead, not exceeding one hundred and sixty acres of land outside of the limits of a town or city, or not exceeding one acre within the limits of a town or city, occupied as a residence by the family of the owner, together with all the improvements on the same, and which, when exempted, shall not be of a value exceeding the sum of five thousand dollars; and which, to become thus exempt from sale as a homestead, shall be specifically described and set forth in a written declaration, by the claimant acknowledged by him or her, and recorded in the office of the County Recorder of the county in which the same is situated; but no property shall be exempt by law from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon; provided, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife.

Mr. KENNEDY. Personally, I am opposed to inserting any homestead clause in this Constitution, but acknowledging the superior wisdom of older members, I am willing that the provision which was first submitted, with my amendment, should be adopted. I am unwilling that the Constitution should fix any measure of the lands to be exempted, either within or without a city or village, or any limitation of the value of the property which is to be exempted as a homestead. That is a question in regard to which I do not know the sentiments of my constituents, nor of any portion of them. It is a question which was not discussed during the campaign upon this old Constitution last year. I believe that such a provision has been productive of more fraud, and more violations of law, than it has of good. This, however, is a personal opinion merely, and, yielding to the views of older and more experienced members of the Convention, I am willing that we should say in the Constitution that a homestead, as defined and fixed by the Legislature—the proper exponent of the opinions and wishes of the people—shall be exempted from forced sale on execution. But I contend that you must leave it to the Legislature, not only because the value of the property—the value of the specific amount of property stated here—may vary, but because it is not advisable that any specific amount shall be fixed, so that we cannot change it without amending our Constitution.

Now, the gentleman from Storey, (Mr. DeLong,) and the gentleman from Ormsby, (Mr. Johnson,)—our worthy President—on a former occasion made eloquent appeals to the members of this Convention in regard to the distress which the wife and children might be compelled to suffer. Some hardships might result, in a few instances, from the fact of there being no homestead provision of this kind, but I think it would be only in a few instances. The gentleman from Storey, (Mr. DeLong,) has to-day advanced still another argument, namely: that under the provisions of the homestead act in California, a man may invest his homestead in hogs, in sheep, or in anything else. Now we do not propose here to put any such provision into our Constitution as they have in the Constitution of California. The only provision on the subject laid down in that Constitution is this:—

"The Legislature shall protect by law from forced sale, a certain portion of the homestead and other property of all heads of families."

Now if, under that provision, a man could sell his property, and invest it in hogs and sheep, it is the fault of the law formed under the Constitution, and not the fault of the provision of the Constitution itself. I am opposed to any provision of that kind, by which, as the gentleman from Storey says, a man who has five thousand dollars in his pocket, though he may owe me a hundred dollars, may defy me, and I cannot collect it from him. There is no justice, law or equity in that. The original section, with the former amendment, together with the provisions of Section 15 of the declaration of rights, or Section 14, as it is now numbered, are all that is necessary for us to place in the Constitution to protect any man against his rapacious creditors. I will call attention to the language of the section of the declaration of rights to which I have referred. It reads—

"The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for payment of any debts or liabilities hereafter contracted; and there shall be no imprisonment for debt, except in case of fraud, and no person shall be imprisoned for a militia fine in time of peace."

Now I contend, with the gentleman from Storey, (Mr. Collins,) that under this amend-

must, now under consideration, a man can invest in improvements any amount of money he sees fit, and thus actually defraud his creditors. The other gentleman from Storey, (Mr. DeLong,) reminds us that we are to remember the old axiom, "That fraud vitiates every contract." I will ask that gentleman, Sir, for the last half century experience, for the practice of the law since I have, whether he does not know that to prove fraud, although you may be perfectly satisfied that it exists, is the most difficult thing that ever lawyers have to undertake in the way of proof?

Mr. DeLONG. I will answer that question now, if the gentleman wants me to. I have always found it the easiest thing to prove.

Mr. KENNEDY. My experience, then, has been different from that of the gentleman, and I will state that it is the most difficult matter I ever attempted to prove before any jury. I might be perfectly satisfied, and they might be perfectly satisfied, that the fraud existed, and yet the actual proof would not be sufficient to entitle them to bring in a verdict.

Mr. DeLONG. Perhaps the presumption of fraud is greater among the people where I have lived than it is where the gentleman from Lyon has lived.

Mr. KENNEDY. Then I will call the gentleman's attention to another legal maxim, and that is, that a man is always to be presumed innocent until he is proved guilty. You must, therefore, prove the fraud beyond any reasonable doubt, for it is an actual crime—made so by statute. I am willing to vote for this provision as it now stands; but most certainly I shall vote against any amendment offered proposing to limit it as to the number of acres or value of the property to be exempted; for that is a question, so far as I am concerned, which I desire to leave to the representatives of the people, elected from my county, as well as others, perhaps, upon that special issue. Now, gentlemen have insisted, upon this floor, time and again, that we are legislating too much in our Constitution; and here, for once, I am willing to meet them on that ground. Let us leave this matter to the representatives of the people, and let them determine it. Let us place the provision in such a shape that they can change it—so that if they find the sum first fixed upon is too small, they can make it larger, and if they find it too large, they can reduce it. I am not willing to make it necessary to change the Constitution before we can get rid of this matter of homesteads. I think such a provision would, oftener tend to work fraud and corruption, than it would afford any protection to those wives and children about whom the gentleman from Lander (Mr. Warwick) spoke so feelingly. Let the section stand as it is, and I will vote for it; but with any amendment, such as has been proposed, I shall vote against it.

Mr. EARL. I oppose the amendment offered by my colleague, (Mr. Toser,) for the reason that it leaves the land open to improvements, allowing the debtor to expend a large amount in that way, in addition to the amount of his property originally set apart as a homestead. I cannot see how the matter could be arranged so as to separate the improvements from the land itself. A person, within a good circumstances, might expend a large amount of money either upon one acre or one hundred and sixty acres of land, and it would be a very difficult thing to prove fraud upon him; and in my opinion, not only difficult, but quite impossible. Now, sir, I thought that this section, after we had amended it the other day, should have satisfied any reasonable man, except, perhaps, in one thing, and that is, the amount fixed upon as the limit; and in regard even to the question of the amount, every member appeared at that time to be satisfied, for I believe no amendment was offered. I will at a proper time propose an amendment, which I will now read for information, and which I think will provide for any changes which may hereafter occur in the currency, leaving that matter to the discretion of the Legislature. I propose to insert in the original section, after the words "of the aggregate value of," the following:—

"Not less than five thousand dollars, provided, that said exemption shall extend to all premises under the value of five thousand dollars, claimed as a homestead under the provisions of this section."

For instance, if a man's premises are worth five thousand dollars, or two hundred dollars, as the case may be, let them be exempt; and if the value afterwards amounts to more than that, then let the property be sold. I do not see the objection to that which my colleague (Mr. DeLong) has urged; for if it is sold, in such a case, the man still gets his five thousand dollars, which he will find a great help to his family.

Mr. DeLONG. Still he would have no home to serve as a shelter for his wife and children. He has the money in his pocket, but no house to live in.

Mr. EARL. Very true; but no law can be framed by which a man can be enabled to retain his home under all circumstances, when that home has become of great value, without doing great injustice to his creditors. I think if a man fails and is unable to pay his debts, he should be very well satisfied to be allowed to retain five thousand dollars to invest in a homestead. But do I understand my colleague to say that under this provision a man could invest his money in hogs or sheep, and that they would be exempt?

Mr. DeLONG. Certainly.

Mr. EARL. Not at all. I am no lawyer, but I would risk a suit upon that question—that under this amendment, the moment a man invests his money in hogs, in sheep, in cattle, or anything except a home, that moment it would be subject to execution. Now, there is another point which I think has not been sufficiently considered, and I wish to urge it as an objec-

sion to the proposed registration of the homestead; and a serious objection too, in my opinion. It is this: that many persons would fail to register their homesteads. Every man is more or less hopeful, even while he is in failing circumstances, and many would therefore neglect to register their homesteads until the crash came, when it would be too late to set apart a homestead for the family. I propose to relieve every man from that requirement, and to say that a homestead to the extent of five thousand dollars shall be exempted without previous registration.

Mr. FRIZELL. I rise to say but a few words on this subject, and will then take my seat. The only argument I desire to offer, is simply to remind the Convention that we shall have a Legislature hereafter—that this Constitution which we are framing proposes that we shall have a Legislature in the future; though I might say, *en passant*, that this Convention does not seem, judging from its action, to contemplate the future existence of a Legislature. I will say still further, Mr. President, that I am getting sick, sir—quite sick. [Laughter.] No man on this floor has more kindly feelings, or better appreciates the honesty of heart and purity of purpose of the members surrounding him than I do; but I came here, sir—saying nothing of the sense or ability which I may have been supposed to possess—simply to make a State Constitution; not to legislate for the future State. Now, this homestead question is a precarious, slippery business any how, and I prefer to leave it for the Legislature, coming as it will, fresh from the people, to settle and determine. They will have ninety days to sit, and that will be ample time for framing and and considering the laws necessary to be passed. Now, sir, I would ask gentlemen what in the world we have to do with people's hogs, or sheep or blacksmith's shops, or with charging men with fraud, or contending that a jury is sure to convict of fraud, or that it is the most difficult thing in the world to convict a man of fraud? What on earth have we to do with all these extraneous matters? I say again, I am getting sick of it all.

Mr. EARL. I suggest that the gentleman have leave of absence for a few minutes. [Laughter.]

Mr. DeLONG. It is probably all owing to bad habits. [Laughter.]

Mr. FRIZELL. I hope, sir, that all these amendments will be voted down, and then I will offer this, which, with the permission of the Convention, I will read. It sets up four bold landmarks; and after that, I am willing to trust for finishing the structure, whether hard or soft, or in whatever manner they please, to the Legislature.

"SEC. 8. The Legislature, at its first session under this Constitution, shall provide by law for securing a homestead to families, and to those having families under their charge, under such rules and regulations, and of such value, as said Legislature shall prescribe."

The provision for those having families under their charge, is an idea not contained in the propositions now before us. Now, Mr. President, and gentlemen of the Convention, I hope that this amendment now under consideration will be voted down, and then I am willing, as I agreed once heretofore, that this section should stand as engrossed; but if that is not done, I hope we shall adopt the substitute which I have just read and sent up.

Mr. LOCKWOOD. I had prepared an amendment of that character, and I trust that when we have a vote upon it, we shall let it be a test vote. Let us see who are in favor of legislating in the Constitution, and who think that all wisdom is going to die out with this Convention. Let us consider it a test vote, and dispose of the subject promptly.

Mr. DeLONG. Only one word, if you please, Mr. President, in relation to that rule of law regarding convictions for fraud. My friend from Lyon (Mr. Kennedy) said that a conviction for fraud had to be obtained like a conviction for crime, in which it is necessary that the evidence shall remove all reasonable doubt. Now, it was held in the case of McDonald *v.* Baker, 2d California Reports, that when a man has concealed his property surreptitiously, a presumption of fraud is thereby raised—that fraud may be inferred in such a case, and is to be repelled by proof.

Mr. KENNEDY. That it may be presumed?

Mr. DeLONG. Yes, sir. And now I say that either one of these amendments would be subject to abuse and fraud, and I do not think that any provision can be framed which would not be.

Now I will only say to my friend who sends up an amendment which he hopes will be voted down, and who uses strong objurgations in his argument, that I am not at all sick, and I hope that he will very speedily be restored to health.

Mr. FRIZELL. Will my colleague allow me to ask him a question? Does he not think that there will be men hereafter in the Legislature who will understand this matter as well, and be equally as much interested in it, as he is? How many children has my colleague?

Mr. DeLONG. Now, that is a very sick question indeed. If the gentleman wants to leave it to the Legislature, why should he offer an amendment providing that the first Legislature shall do so? Consistency is a jewel.

Mr. FRIZELL. My colleague does not wear it.

Mr. DeLONG. I never wore jewelry in my life. [Laughter.] I say we have just as good a right to instruct the Legislature in one thing as in another. If we say we they shall provide in some way for exempting the homestead, we may also say how they shall make such provision.

Mr. LOCKWOOD. Let me ask the gentleman one question. I understand him to say that in case of an appeal to the Supreme Court of California, that court decided that such a

statutory clause was entirely inoperative, and therefore, even if the Legislature were opposed to a homestead law, we should still have it, under the constitutional provision. Is not that the true position?

Mr. DeLONG. It is true that the constitutional provision is mandatory, and the Legislature therefore cannot prevent it. It leaves the people with the largest liberty to create homesteads as they please. ["Question, question."]

Mr. NOURSE. I shall vote against the amendment offered by the gentleman from Storey, (Mr. Tozer,) and if the section is to be changed at all, I shall prefer to strike it out altogether, because Section 15 of the Declaration of Rights, as printed in this old Constitution, in my judgment, provides for this whole matter.

The question was taken on the motion by Mr. Tozer to recommit Section 30, with instructions to amend as proposed by him, and it was not agreed to.

Mr. FRIZELL. I now, with all the diffidence in the world, appeal to the Convention to adopt my substitute, and I will ask that it be read.

The Secretary read as follows:—

Sec. 30. The Legislature, at its first session under this Constitution, shall provide by law for securing a homestead to families, and to those having a family under their charge, under such rules and regulations, and of such value, as said Legislature shall prescribe.

Mr. EARL. I offered my amendment in good faith, and I think it takes precedence of my colleague's substitute. I move to recommit the section with instructions to amend, by inserting after the words "of the aggregate value of," the following:—

"Not less than five thousand dollars, provided, that said exemption shall extend to all premises under the value of five thousand dollars, claimed as a homestead under the provisions of this section."

The amendment anticipates only a change of the currency. If the Legislature deems it proper, in case the currency should go down, the limitation may be fixed at a larger sum, but not at less than five thousand dollars in any event.

Mr. NOURSE. Does this amendment compel every man to have a homestead.

The PRESIDENT. The Chair is not prepared to decide that question.

The question was taken on the motion of Mr. Earl, and it was not agreed to.

The question was next stated to be upon the motion of Mr. Frizell.

Mr. FRIZELL. No doubt, Mr. President and gentlemen, you have all read the Constitution of the United States, the Declaration of Independence, and the Old Articles of Confederation. Those papers sound something like statesmanship, because they do not talk about everything in the way of minor details. I have tried, sir, in my weak way, which is no doubt very weak, and a great ways off, to keep them great models in view; but here in this amendment are laid down the landmarks, at least, which may be required for the guidance of the Legislature. If it suits the Convention, I hope members will vote for it; if not, they can vote it down.

Mr. NOURSE. I object to the amendment, because under it the Legislature fixes the value, and there is no reliable basis for it.

The question was taken on Mr. Frizell's amendment, and it was not agreed to.

Mr. EARL. I move the adoption of the section as it stands.

The PRESIDENT. It is not necessary, as this is the third reading of the article.

The PRESIDENT appointed as the special committee, under the instructions to strike out Section 32, Messrs. DeLong, Parker, and Felcom.

Mr. DeLONG. As our duty is a very simple one, I suppose that with the consent of the Convention we can report now. The special committee to which was referred Section 32, with instructions to strike it out, beg leave to report to the Convention that they have performed that duty, and the section is struck out.

The question was taken on adopting the report of the committee, and it was adopted.

The hour of five o'clock having arrived, the President declared the Convention at recess until seven o'clock, P. M.

EVENING SESSION.

The Convention met at seven o'clock, P. M, and was called to order by the President.

The Secretary reported that there was not a quorum of the members in attendance.

CALL OF THE HOUSE.

On motion of Mr. FITCH, a call of the House was ordered, and the following gentlemen responded to their names:—Messrs. Banks, Brosnan, Chapin, Crawford, Dunne, Fitch, Hovey, Proctor, and Mr. President—9.

Messrs. Bartoviat, Kennedy, Earl, Crowman, Tuglisbee, DeLong, Belden, Brady, McClinton, Tozer, Hawley, Kinkead, and Mesoe, were severally brought in by the Sergeant-at-Arms, and made excuses for their absence.

After some proceedings of a jocose character under the call of the House—

On motion of Mr. DeLONG, further proceedings under the call were dispensed with.

The PRESIDENT announced that the sum of four dollars had been collected by fines imposed upon members under the call of the House, which, at the suggestion of the Sergeant-at-Arms, would be given to the Sanitary Fund.

Mr. GIBSON said, as he had come in since, he would pay a dollar, so as to make it five dollars.

LEGISLATIVE DEPARTMENT.

The Convention resumed the consideration of Article IV, entitled Legislative Department, upon the third reading of the article.

Mr. DeLONG. I suggest that the rule requiring a bill to be read through on its third reading, might be suspended, unless some gentleman has an amendment to offer. I will move that the further reading of this article be dispensed with.

The PRESIDENT. That proposition has heretofore been made in the Convention. Of course it is within the power of the Convention to dispense with the reading, if it is not deemed necessary, but, for one, I am exceedingly desirous that these articles should be read through after they are engrossed, because it has become apparent already, that errors might otherwise escape correction. Even if there is but a single word to supply or strike out, or any change necessary to be made, however slight, the correction should be made before the bill is passed to enrollment.

Mr. DeLONG. Very well; I withdraw the motion.

The reading of the article was proceeded with, and several clerical errors were ordered to be corrected by the Secretary, by unanimous consent.

COMPENSATION OF MEMBERS OF THE LEGISLATURE.

Section 28, having been read, as follows:—

SEC. 28. No money shall be drawn from the State treasury as salary or compensation to any officer or employee of the Legislature, or either branch thereof, except in cases where such salary or compensation has been fixed by a law in force prior to the election or appointment of such officer or employee; and the salary or compensation so fixed shall neither be increased nor diminished so as to apply to any officer or employee of the Legislature, or either branch thereof, at such session; *provided*, that this restriction shall not apply to the first special and regular sessions of the Legislature.

[Mr. CRAPIN in the Chair.]

Mr. JOHNSON. I think it will be seen that the latter part of that clause is entirely unnecessary, and that it does not harmonize with the proposed general legislative system. This portion of the section was adopted by the former Convention, under circumstances differing from the present. Under the framework of the system, as then devised, we were to have a special session for a limited time immediately succeeding the election, for the special purpose of electing United States Senators, and then, following that, a regular session of the Legislature—no duties to be performed at the special session further than the election of Senators. Members of the former Convention will bear witness as to the objects then had in view, and that this special session was to transact no other business than such as I have stated. Consequently, this limitation should not be made to apply to a special session. At the first regular session, the Legislature necessarily has to elect its officers and employees before it is properly organized, and, consequently, it should be clothed with the power of fixing the salaries of all its officers. Now, I propose to amend the proviso, and if no objection be made, we can make the alteration at once. I move to strike out the words "special and regular sessions," and insert the word "session," so that the proviso will read:—

"*Provided*, that this resolution shall not apply to the first session of the Legislature."

No objection being made, the Secretary was instructed to make the amendment.

FIRST SESSION OF THE LEGISLATURE.

Section 29 was read, as follows:—

SEC. 29. The first regular session of the Legislature under this Constitution may extend to ninety days, but no subsequent regular session shall exceed sixty days, nor any special session convened by the Governor exceed twenty days.

Mr. JOHNSON. I suggest that the word "regular," in the first line, need not be there, under the theory of the system which we propose to adopt, because the first session will be a regular session.

Mr. BANKS. I think it is barely possible that there may be a special session, before the regular session.

Mr. JOHNSON. You cannot possibly have a special session anterior to the regular session, unless you first change the whole theory by which we have been governed, in the arrangements we have thus far made. The old Constitution, on the contrary, contemplated having a special session first, and then a regular session.

Mr. FITCH. I understand that it is not proposed to have the regular session commence until January next.

Mr. JOHNSON. According to the plan which we have thus far adopted, there is to be no election until November, and I suppose the Legislature cannot meet until January.

Mr. FITCH. But we might provide in the Schedule for a special session.

Mr. JOHNSON. These matters were discussed some days since, and the conclusion I then arrived at, although there was no distinct action had on the subject by the Convention, there being nothing under consideration making an issue on the question, was, that there should be no election until the time of the Presidential election, in November. The gentleman from Humboldt (Mr. Dunne) participated in that discussion, and I think he will recollect that such seemed to be the expression of the Convention.

Mr. DUNNE. There is another section which we have acted upon, and which has a bearing upon this question. The time of the election was at first fixed in September, but that was subsequently rejected, and November agreed upon, so that now, by the provisions of our Constitution, there can be no canvassing of the votes until December.

Mr. FITCH. Perhaps I may have misunderstood the action of the Convention, but I thought it was designed to have the first session of the Legislature prior to January.

Mr. JOHNSON. No specific time has been appointed as yet, and it is in the power of the

Convention to fix another time, if it chooses to do so. This matter was discussed, upon the question of canvassing the votes, on the occasion, I believe, when the proposition was before the Convention to fix an earlier period for the first election; and from the tenor and purport of that discussion, I felt at liberty to presume that the basis of action of the Convention was such as to preclude the necessity of a special session.

Mr. FITCH. If we finally adopt this section now, it will be beyond our power to recall it. I have myself contemplated the probability, nay, the necessity of a session previous to January next.

Mr. HOVEY. I have based my vote and my action hitherto, upon the hypothesis of my colleague, (Mr. Fitch,) that in the Schedule we shall fix the time of the first election at an earlier day.

Mr. KENNEDY. I would like to have gentlemen explain the reason why a session is necessary prior to the first of January, 1865.

Mr. FITCH. I can explain it very readily. It is required that we shall elect two United States Senators to represent the State of Nevada in Congress, and very important legislation may be expected to come up in Congress at an early period in the next session. Now, if our Legislature does not meet until January, we cannot, of course, be represented in the Senate earlier than February, or perhaps March; and I, for one, judge it to be expedient, if we are going to have a representation in Congress at all, that we should have our representatives there as early as possible. Gentlemen will bear in mind that Congress meets in December next.

Mr. KENNEDY. I certainly understood, when we fixed the day of election in November, that we were not to have a session of the Legislature until January. I can see no special use for a session before that time. In regard to the election of United States Senators, that should be done as the first business of the session.

Mr. FITCH. If the gentleman had much experience in legislative matters, perhaps he would be of opinion that it would take a long time to elect them.

Mr. COLLINS. I can conceive of some important matters which should require an early session of the Legislature, and I confess that my vote has been given heretofore, with the idea that this matter would be arranged in the Schedule. I have not had much conversation with any one on the subject, but in the county which I represent, at present our judicial affairs are in such a condition, that there is an urgent demand for the organization of the State at as early a day as possible. If there be any one thing which more than another will operate to induce Storey County to go for a State organization, it will be the conviction on the part of the electors of that county, that the State will be launched, the judicial officers elected, and their duties defined by the Legislature, at the earliest practicable day. We have on the docket of the court in that district, somewhere about four hundred cases, and we have only one judge whose jurisdiction extends to those cases. There is, besides that, a large amount of litigation which would be commenced in that court if there were the least possible chance of cases being brought to trial at an early day. If this Convention shall secure the people of Storey County, (and I think there are other counties in the same category, though not, perhaps, so deeply involved in this judicial—I will not call it muddle—this judicial inaction,) that the judicial system under the State organization will be put into immediate operation, it will secure the support of the people of Storey County for a State organization. The people of the whole Territory feel the present condition of things in respect to the judiciary to be a great hardship, and they will take much less interest in the question of establishing a State Government if there is to be delay in that matter, than they would if assured that at an early day, as early as November, if possible, the Legislature would meet and define the duties of the judges who are to be elected under this Constitution. On my part, I can see no reason for this proposed delay, and for my life I cannot comprehend the *rationale* of this indifference to setting in motion the wheels of the State Government at the earliest possible hour. There may be reasons which I do not yet understand, and I would like to hear gentlemen who are opposed to that proposition, state the grounds of their opposition.

Mr. FITCH. I suggest that it might have a pernicious effect to act definitely and finally on this subject now; but the matter could be reached, perhaps, by a slight amendment in Section 2, and then, possibly, by making some further provision in the Schedule. I will suggest that Section 2 be so amended as to read in this way:—

"The sessions of the Legislature shall be biennial, and shall, after the first session to be held under this Constitution, commence on the first Monday of January, in each year."

Then it would also be necessary to amend the next following section, so as to read:—

"The members of the Legislature, except at the first session, shall be chosen biennially," etc.

That would give us an opportunity to arrange this matter in the schedule, in such manner as we may deem best, providing here for the first session, and the first election of members of the Legislature, without prescribing when that first session shall be held.

Mr. JOHNSON. The gentleman does not, by his amendment, relieve this question of all the difficulties attending it. We have already passed an article entitled Executive Department, and that is beyond the control of the Convention for the present.

Mr. FITCH. It can be reconsidered if necessary.

Mr. JOHNSON. Of course it is not beyond the power of the Convention to reconsider it, but it is beyond its control in the ordinary course of business. But the amendment suggested by the gentleman from Storey does not cure the evil of which he speaks. Now, I feel unlike discussing the subject of convening an early session of the Legislature, but gentlemen must be aware of one material fact, and that is, that you cannot have a session, at least, until the Governor is inaugurated.

The PRESIDENT *pro tem.* (interrupting.) Is there any motion before the Convention?

Mr. FITCH. The question, I understand, is upon the passage of the article.

The PRESIDENT *pro tem.* The question is upon the passage of Article IV, which is upon its third reading.

Mr. JOHNSON. If there is no motion pending, I am undoubtedly entirely out of order, but I supposed that a motion had been made.

Mr. GIBSON. I hope my colleague will be allowed to proceed.

Mr. CHAPIN. We all want information on this subject. ["Leave, leave!"]

The PRESIDENT *pro tem.* If there is no objection, the gentleman from Ormsby will proceed.

Mr. JOHNSON. I say I am indisposed to discuss the matter of the propriety of having an early session of the Legislature. As for the election of United States Senators, that subject may or may not be involved; but one thing is quite apparent, namely, that we cannot have a session of the Legislature unless we have a Governor—in other words, that simultaneously with the meeting of the Legislature, or prior to that, we must provide for the inauguration of our State officers. We cannot conveniently have one branch of the Government *in esse* whilst the other is not. And, as I was proceeding to say, that necessarily involves another amendment in Article V, entitled Executive Department, which we have already passed. It will be seen that according to the present provisions of that article, the canvassing of the votes of our State officers cannot occur until the third Monday in December. This is a period, it is true, prior to the time proposed for the meeting of the Legislature, the first Monday in January; but it is so short a time prior, that the interval between that and the first Monday of January certainly would be insufficient to accomplish any of the benefits which have been suggested here as likely to result from calling an earlier session.

But there is another view of this matter. If I were disposed to discuss the propriety of an early session for the election of United States Senators, there is another view, which relates to the propriety of our having an early representation in the United States Senate, and in Congress; and that is, the difficulty which we shall experience, and the expense and trouble growing out of the holding of repeated elections. The query is whether or not we should be benefited sufficiently to compensate for the disadvantages of holding an extra election. Without expressing any opinion myself upon that point, I would ask gentlemen to examine the question as a practical one, and inquire whether or not we should be sufficiently compensated for the trouble and expense of these repeated elections. We are to have, as it now stands, one election on the first Wednesday in September, to vote upon the Constitution, and then another, a general election, in November, which is the time of the Presidential election.

Mr. PROCTOR. Cannot we provide in the schedule for an earlier election, an earlier meeting of the Legislature?

Mr. JOHNSON. Oh no, sir; by no means; not unless we make the corresponding changes which are required in other portions of this instrument, such as I have already pointed out.

Mr. STURTEVANT. The first Wednesday in September is the time fixed for holding the general election for Territorial officers, who are to hold office in case the Constitution shall be defeated, and it will not do to let that time pass by.

Mr. JOHNSON. In reply to the inquiry of the gentleman from Nye, (Mr. Proctor,) I will say, that of Territorial officers, properly speaking, we have none to elect, except our delegate in Congress; and his election is fixed under existing laws, and nothing we can do here can change the period for electing that officer. As to the other Territorial officers, properly so-called, the people do not elect any of them. In some counties they have to elect county officers, but the Territorial county officers can be continued as *ex-officio* officers under the State Government, or not, as the Convention may please.

Mr. HAWLEY. Does the gentleman mean to say that it is not necessary to elect members of the Assembly this fall?

Mr. JOHNSON. Yes; they have to be elected, and also one-half of the Council. They are to be elected, however, in the several counties. But I desire to be understood as saying this, that there is no means which we can adopt, by any provision in this Constitution, which will obviate the necessity of holding the Territorial election in September, because we cannot possibly anticipate whether this Constitution will be adopted or not. And I suppose that every elector will vote at that September election, just as he would if there were no proposition pending in regard to a State Constitution and State Government; in other words, he will vote independently of that consideration, and select just such men, as Territorial officers, as he would otherwise, because at the same time that they are elected the vote is taken upon the adoption or rejection of the State Constitution. We cannot determine here that the people will ratify that Constitution, and we have already heard within these walls grave forebodings that a certain course of action on our part will inevitably result in the defeat of the Constitution.

The proposition is this: we have to vote for or against the Constitution on the first Wednesday of September, which is the seventh day of that month. It is true that we have the authority, if we please, to allow the people to vote at the same time for State officers, but after the result of the experiment attempted last year, I do not think that plan will be tried again. On the contrary, I assume it as a foregone conclusion that not a single member of this Convention will be found to advocate the election of the State officers at the same time that the vote is taken upon the Constitution.

Mr. STURTEVANT. I suppose the gentleman is aware that I was not running for office last fall. [Merriment.]

Mr. JOHNSON. My remarks did not apply to the gentleman from Washoe, but I have some others in my mind who were members of the former Convention. With perhaps a single exception, I believe I stood alone in that Convention as an opponent of that policy, and should certainly oppose it at this time. But if we do not adopt that policy, and provide for a State election at the same time that the vote is taken for or against the Constitution, I admit that we may, if we please, appoint any day subsequent to that for the election of State officers. I concede this as a legal proposition. But the question arises here, how far removed that day should be, under all the circumstances, so as to allow for the canvassing of the votes? What lapse of time will be necessary? We have had some illustrations upon that point from gentlemen here who represent remote counties, embracing in some instances quite an extensive population, although in others, including rather large regions of sage brush.

I think we have had the testimony of one gentleman from Humboldt County, that it required some eight or ten days to transmit the returns from remote precincts in that county. Then there is also the time required for canvassing the votes, as well as for transmitting the returns to the seat of Government. And in the event of a closely contested election—and we have to anticipate such probabilities—gentlemen will perceive that nothing short of three days would be sufficient to allow for the canvassing officers to perform their work at the seat of Government. They would have to receive and canvass the returns, and declare the result. That would bring us down as late as October, the election occurring on the seventh day of September.

Mr. DUNNE. I would like to hear some remarks directed to this point: whether or not, allowing this section to stand as it is, if it be the desire of the Convention, we can still provide for an earlier convening of the Legislature for the election of United States Senators? Can we not allow it to remain exactly as it is, and provide for a change of time for the first session, entirely in the schedule? If so, then this discussion might come up properly when we reach that portion of the schedule.

Mr. JOHNSON. I know my remarks are not in order, but I am speaking by permission of the Convention.

Mr. DUNNE. The gentleman misunderstands the nature of the question. It is, whether or not it is the opinion of the Convention, or of members of the Convention, whose opinions might guide us upon such a subject, that we can provide for this matter altogether in the Schedule.

Mr. JOHNSON. I think there can certainly be no doubt about it, this being the general frame-work only.

Mr. FITCH. How would it be as to the election of officers under the Territorial organization?

Mr. JOHNSON. There is no question about it, I say, because this is merely the general system.

Mr. NOURSE. Then is there any necessity of changing the phraseology of the section as it stands here?

Mr. JOHNSON. The phraseology of this general frame-work should be such that the harmony of the whole shall not be marred and obscured by exceptional cases. Such exceptions should have no place in this part of the Constitution.

Mr. BROSNAN. I would also make a suggestion in this same connection. The gentleman from Ormsby entertains the same views which I did in the former Convention, and it will also be remembered that we did not change the word "biennial" there, merely because we wanted to provide for annual sessions for a year or two subsequently, but we left it as it stands, with a view to making that provision in the schedule; and, as I understand it, with the view of also providing in the schedule for a special election.

Mr. JOHNSON. These are reasons why we should strike out this provision from the Constitution. Whilst here we provide the general frame-work of our legislative system, in the schedule, as the gentleman from Humboldt (Mr. Dunne) has remarked, would be the proper place for any temporary exceptions, and when that shall be under consideration would be the proper time for their discussion. I only propose now, however, to reply to some remarks which had been made by other gentlemen on this particular matter. We can provide in the schedule, as I have before said, for these exceptional cases in such a manner as to preserve the harmony and unison of the whole instrument.

Mr. FITCH. In order to get this matter properly before the Convention, I will make this motion: I move to commit Article IV to a special committee of three, with instructions to amend as follows: After the word "shall," in line two, of Section 2, add "except at the first session." After the word "shall," in line one, of Section 3, add "except at the first election to be held under this Constitution."

The question was stated upon the motion to recommit, with these instructions.

Mr. FITCH. Upon this motion I have simply to say, that on the first Wednesday of September, to wit, the seventh day of September, the question of the ratification or rejection of the Constitution will be submitted to the people. I will admit that probably thirty days may elapse before the official returns of the election can be certified to the Secretary of State, and the official announcement of the result can be telegraphed officially to the President of the United States, who is thereupon empowered to admit the State of Nevada into the Union, by proclamation. That might be accomplished, then, immediately before the Presidential election. Now, it is true that, although the official returns may not be received within a month, yet the result of the election will be known certainly within a week, and we can provide for the election of members of the Legislature, and the Governor and judicial officers, as early, at farthest, as the middle of October, and the officers elected can take their seats about the tenth of November, and put the machinery of the State Government at once into operation.

I trust that members will consider the importance of this subject, which has not, perhaps, suggested itself to members. If we have a State Government, we have a member of Congress, and Congress meets on the first Monday in December. It is among the remote possibilities, though I hope not among the probabilities, that the election of the President of the United States may be thrown into the United States House of Representatives—that Mr. Lincoln may not receive a majority of the whole number of electoral votes. In that event, the vote of the State of Nevada would count just as much as the thirty-four votes of the State of New York, the election in the House of Representatives being by States. It would therefore be a national necessity that the vote of Nevada should be had in the House of Representatives of the United States, in order to secure the election of Mr. Lincoln to the Presidency; and if we do not provide for a Governor and members of the Legislature to go into office before the first of January, our representative in Congress may not be able to take his seat before the election is over. That is among the contingencies of the election, and so long as it is possible for us to have an early election, I hold that it is our duty to do it. By so doing we shall be able to present strong arguments in favor of the adoption of the Constitution. We can go before the people and tell them that the vote of Nevada may be needed in the United States House of Representatives, in order to strengthen the arm of the Government, and that will be in addition to the argument that, by the adoption of the Constitution, the people will be enabled to vote at the Presidential election.

For these reasons, sir, I submit that it would be well to have the State election take place at an earlier period than November, and then we had better provide for taking the necessary steps to put the machinery of the State Government in motion as soon as the State shall be admitted. I do not wish to precipitate a debate upon this subject, but I trust that the Convention will carefully consider the propriety of making the amendment I have suggested, not only to this article, but also, if necessary, to Article V.

Mr. PROCTOR. It seems to me that this whole subject is out of order, and that the proper place to discuss the question will be when we have the schedule under consideration. Now, the proposition of the gentleman from Storey, (Mr. Fitch,) it seems to me, would have a tendency to injure the whole framework of the Constitution, a thing which the gentleman from Ormsby (Mr. Johnson) is very desirous of guarding against.

Mr. FITCH. Does the gentleman from Nye have an idea that the gentleman from Ormsby, or anybody else, holds that we cannot in the schedule, alter not only the time for the election, but also the time for the Legislature to meet, and for the State officers to take their seats?

Mr. JOHNSON. There can be no doubt of that.

Mr. PROCTOR. I think, most unquestionably, after the body of the Constitution is adopted, we can provide in the schedule when the first election shall take place, and how and when the officers elected shall enter upon the duties of their respective offices.

Mr. FITCH. And at what time they shall take their seats?

Mr. PROCTOR. Yes, certainly.

Mr. FITCH. Then if we can, all right.

Mr. JOHNSON. The inquiry of the gentleman from Storey (Mr. Fitch) was not directed to me, but as my name was embraced in it, I will answer without hesitation. I thought I had made myself distinctly understood on that proposition heretofore. The only object I have been aiming at in connection with this matter hitherto, has been to preserve the harmony and unison of the instrument throughout. I say that when we are establishing the general frame-work, we should not embrace in it the exceptional cases also, but that these provisions should be found either in the miscellaneous provisions or the schedule. That is my proposition, and I do not think that any gentleman on the floor, whether a lawyer or otherwise, would dispute that proposition. The one is the general frame-work of our Constitution, while the other embodies the special and exceptional cases; and the two being construed together, as they must be, no conflict could result, the one applying to the future, and the other to the present or immediately succeeding time. There can be no doubt, in my judgment, of the propriety of that course.

Mr. FITCH. Having great confidence in the opinion of the gentleman from Ormsby, I take pleasure in withdrawing my motion.

Mr. JOHNSON. The question now recurs, I suppose, upon my motion to amend Section 30 by striking out the word "regular," and that, I believe, requires the unanimous consent of the Convention.

Mr. HOVEY. Does not that word "regular," have reference to special sessions which may be convened subsequently by the Governor?

The amendment was not agreed to.

Mr. BANKS. I wish to know exactly how this matter we have been discussing now stands. I understand—and I have listened attentively to the discussion—that this section remains unchanged, and that it is proposed to provide in the schedule for any exceptions to these general provisions. Is that the state of the case?

CALL OF THE HOUSE.

Mr. KENNEDY. I rise to a point of order. I think there is no quorum present.

The SECRETARY reported that there were only twenty members present.

[The Pressident in the Chair.]

On motion of Mr. BANKS a call of the House was ordered, and the following members responded to their names: Messrs. Banks, Brady, Brosnan, Collins, Crosman, Dunne, Earl, Fitch, Frisell, Gibson, Hawley, Hovey, Hudson, Kennedy, McClinton, Nourse, Proctor, Shuttevant, Wetherill, and Mr. President—20.

Messrs. Belden, DeLong, Kinkead, Tagliabue, and Toner were severally admitted, and made their excuse to the Convention.

After considerable time spent in hearing and considering the excuses of absent members, etc.,

On motion of Mr. NOURSE, further proceedings under the call were dispensed with.

Mr. EARL moved that the Convention adjourn.

The question was taken, and the motion was not agreed to.

LEGISLATIVE DEPARTMENT.

The third reading of Article IV, entitled Legislative Department, was proceeded with.

THE HOMESTEAD.

Section 30 was read as engrossed.

Mr. DUNNE. The last provision seems only to apply to liens made by the husband and wife jointly. It says—

"*Provided*, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife."

Now, is it not intended that the person who is the head of the family may alienate the homestead? If it is so intended, I would inquire whether the language here would not prevent the person who is entitled to the homestead from alienating it, after that relationship of husband and wife has ceased to exist by reason of the death of one of the parties.

Mr. EARL. I suppose the homestead law, which will be passed pursuant to this provision, will regulate the matter, and declare who shall be considered the head of the family.

The PRESIDENT. The inquiry seems to be propounded in reference to the lien, in view of the exception in the last proviso.

Mr. COLLINS. Does not that language properly refer to the joint consent required to be given on the part of the husband and wife?

Mr. DUNNE. That is the very point I desire to raise.

The PRESIDENT. The gentleman from Humboldt asks, as I understand, whether, where the relation of husband and wife does not exist, this provision would apply? It might be that a widow, or a widower, or another person, would be the head of a family; as, for instance, a brother, with minor children dependent upon him for support, and occupying towards him the relation of a family. The inquiry, I suppose, extends to them—as to whether or not the exemption would apply in such cases.

Mr. NOURSE. I understand the exemption applies, whether there be the relation of husband and wife or not. Then the prohibition of sale applies only where there is both a husband and wife, and the object is simply to prevent the husband from selling the homestead away, without the consent of the wife. Where there is no longer a wife, there is nothing, as I understand it, to prohibit the alienation by the husband, or rather, by him who has been the husband. The preceding clause only makes certain exceptions—it says the homestead shall not be exempted in certain cases. And if a lien is given by both husband and wife, then, under this latter proviso, the exemption ceases to apply. I see nothing to prevent the husband alone, after he has lost his wife, from alienating the homestead by his own act.

Mr. DUNNE. I should like to see some language placed there for the protection of minors.

Mr. NOURSE. Does the gentleman mean to require the consent of minors?

Mr. DUNNE. Yes, sir; or the consent of such persons as may legally represent them; as, for instance, by order of the Probate Court. That seems to me to be a case requiring, perhaps, more careful safeguards, even, than are necessary to be required for the protection of the wife. There might be an elder brother seeking to deprive the minor children of their property. It may be sufficient to provide that the alienation shall take place only by order of the Probate Court.

Mr. NOURSE. The property of minors cannot be alienated without the power of the guardian to sell; and when, therefore, the homestead becomes the property of minors, the Probate Court at once guards the rights of such minors. To effect the sale of the property of minors, there must be a guardian first appointed, and he must get an order for sale from the Probate Court, upon showing cause. But if the father still lives, the mother being dead, it seems to me proper to leave in the father's

hands a certain discretion as to what he will do with the property.

The PRESIDENT. That would suggest another inquiry. If the mother dies, and the father survive, how will this section affect the right of the survivor? The father being the survivor, is the head of the family, and entitled to the homestead; and how far does this provision exempt the homestead from the operation of a lien given by him alone?

Mr. NOURSE. I suppose he may give a lien, and I think the Convention would not want to restrict him. So long as the mother lives, it requires her consent, but after she is gone, we do not wish to tie his hands?

Mr. DUNNE. That is not the point of my inquiry, exactly; but it is whether, after he has done that—after he has sold the homestead, and received the money—he could then fall back on the homestead right, and attempt to set up a claim to the property, under this proviso?

Mr. NOURSE. I do not suppose the homestead right could apply to the money, after the money is once paid.

Mr. DUNNE. That is not what I mean. Having given a lien—having encumbered the homestead with a lien—then, when that lien is attempted to be enforced, can the head of the family claim the benefit of this provision as against the lien?

Mr. NOURSE. There is nothing here to prevent it. When the wife dies, he may make the lien alone. When but one of the two is left, the husband alone, for example, there seems to be no good reason for any restriction in that respect.

Mr. TAGLIABUE. What is before the Convention? I do not think these gentlemen are talking to the question at all.

Mr. COLLINS. I cannot see any difficulty in this matter, if it is not contemplated to restrict the action of the husband after the wife dies.

Mr. TAGLIABUE. I rise to a point of order. What is before the Convention? I believe there is no motion whatever pending.

The PRESIDENT. The article is before the Convention on its third reading, and discussion as to the construction of the various sections I think is in order.

Mr. COLLINS. The object of this language seems to be very clear. It is, that while the husband and wife are both living, neither shall be permitted to alienate the property without the consent of the other. That seems to be the sole object of the provision. It says:—

"And shall not be alienated without the joint consent of husband and wife, when that relation exists."

After that relation ceases, as a matter of course the restriction ceases. If the husband dies, the wife may, by her own act, alienate the property, and *vice versa*.

The PRESIDENT. If the gentleman will permit me, I will suggest that it is the latter clause to which the gentleman from Humboldt calls attention.

Mr. TAGLIABUE. I think the clause he refers to is not printed at all.

Mr. COLLINS. I would like to hear it read.

The PRESIDENT. The inquiry, as the Chair understands, of the gentleman from Humboldt (Mr. Dunne) is in reference to the latter clause, which the Secretary will read.

The SECRETARY read as follows:—

"*Provided*, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife; and laws shall be enacted providing for the recording of such homestead within the county in which the same may be situated."

Mr. BROSNAN. I had not given much attention to the inquiry of the gentleman from Humboldt, but I understand it is as to whether a person being the head of a family—as for instance, a brother having younger brothers and sisters under his charge, or a widower, being the head of the family—whether in such a case the head of the family could himself alienate the property after the decease of the wife or mother. From the reading of the section, I have no doubt that he could, because I see nothing there to prohibit it.

The PRESIDENT. The point is as to the lien—as to whether the homestead would or would not be subject to a lien or mortgage, which might be executed by the survivor alone.

Mr. BROSNAN. I see no reason why it should not be; and I will state that in California it is provided by statute—although there is but little said in regard to the subject in the Constitution of that State—that the head of the family cannot alienate the homestead; showing that in that State they have the same understanding of the subject as I have stated.

Mr. EARL. Does the gentleman understand that the brother, being the head of the family, might give a lien on the homestead, and in that manner steal the property?

Mr. BROSNAN. No, sir. There are frequently cases—I suppose the gentleman will recollect many such—where brothers inheriting a portion of the property have had charge of the younger children; but in such cases, as a matter of course, the brother could not alienate any more of the property than the portion he was himself entitled to.

Mr. FITCH. Why not insert the words of the proviso in the preceding part, after the words "when that relation exists?"

Mr. NOURSE. The joint consent could not be given, unless the relation did exist.

Mr. FITCH. But that would make it agree with the first part of the section.

The PRESIDENT. That amendment may be made by unanimous consent.

Mr. FITCH. I make the motion.

The question was taken on the amendment proposed by Mr. Fitch, and it was not agreed to.

SEPARATE PROPERTY OF THE WIFE.

Section 31 was read, as follows:—

Sec. 31. All property, both real and personal, of the

wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

Mr. NOURSE. I suggest the striking out of the word "more," so that the clause shall read: "Laws shall be passed clearly defining," instead of "more clearly defining the rights of the wife," &c.

The PRESIDENT. Is it not proper, in that connection, following the definition of her rights, in preceding sections of the Constitution?

Mr. NOURSE. That may be so, and I will not make the motion.

LEGISLATIVE COMPENSATION.

Section 33 having been read, as amended, as follows:—

SEC. 33. The members of the Legislature shall receive for their services a compensation to be fixed by law, and paid out of the public treasury, but no increase of the compensation shall take effect during the term for which the members of either House shall have been elected: *provided*, that an appropriation may be made for the payment of such actual expenses as members of the Legislature may incur for postage, express charges, newspapers, and stationery, not exceeding the sum of sixty dollars, for any general or special session, to each member; *and furthermore provided*, that the Speaker of the Assembly, and Lieutenant Governor, as President of the Senate, shall each, during the time of their actual attendance as such presiding officers, receive an additional allowance of two dollars per diem.

Mr. NOURSE. In regard to that last proviso, relating to the compensation of the Speaker of the Assembly, and the Lieutenant Governor, as President of the Senate, I would ask if that has been well considered; because it has been customary, I believe, for presiding officers of legislative bodies to receive double pay.

Mr. FITCH. That is the case in Minnesota, I suppose, where the members of the Legislature get only two dollars a day.

Mr. NOURSE. It is the custom, too, in Congress, and in the Legislature of every New England State.

Mr. DUNNE. I call attention to the amendment which has been already made in this section, in the first proviso. It now provides that the sum of sixty dollars shall be allowed each member for any general or special session, for postage, newspapers, &c. Sixty dollars is allowed even for a special session, which I believe is limited to twenty days. Now if sixty dollars is all that is necessary for a session of sixty days, why should the same amount be required for a session of twenty days?

Mr. FITCH. Would not the gentleman leave that much, at least, to the discretion of the Legislature? Cannot we trust as much as that to the sense of justice and the generosity of our future Legislatures?

No amendments being proposed to the section, the reading of the article was continued.

THE VETO POWER.

Section 35 having been read, as engrossed, as follows:—

SEC. 35. Every bill which may have passed the Legislature, shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter such objections upon the journal, and proceed to reconsider it. If, after such reconsideration, it again pass both Houses by ayes and noes, by a majority of two-thirds of the members elected to each House, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within five days after it shall have been presented to him, (Sunday excepted,) exclusive of the day on which he received it, the same shall be a law, in like manner as if he had signed it, unless the Legislature, by its final adjournment, prevent such return, in which case it shall be a law, unless the Governor, within ten days next after the adjournment, (Sundays excepted,) shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the Legislature at its next session, in like manner as if it had been returned by the Governor; and if the same shall receive the vote of two-thirds of the members elected to each branch of the Legislature, upon a vote taken by ayes and noes, to be entered upon the journals of each House, it shall become a law.

Mr. NOURSE. In the first part of this section, it seems to me that the word "majority" is not correctly used. It says—"by a majority of two thirds of the members elected to each House." I think it should be "by a vote of two thirds," instead of "by a majority." I see the word "vote" is used in the subsequent part of the section, and I move to strike out the word "majority," and insert the word "vote."

Mr. PROCTOR. I see the same objection here that I did in another section, only that here it is more forcibly presented. It says in this section that a majority of two thirds of the members elected shall be necessary to pass a bill over the Governor's veto. Now I will refer to gentlemen who have had some legislative experience—which I have not, never having been inside of a legislative body—and I would ask them how often, in their experience, they would find two thirds of the members elected on the floor to vote. Now, sir, I look upon this provision as being as absolute as the veto power which exists in this Territory at the present time. I think it would be utterly impossible, under such a provision, to pass any bill over the Governor's veto, and for that reason I move to amend this section by striking out the word "elected," and inserting the word "present." I believe that amendment will cover it.

The PRESIDENT. The question will first be on the motion to strike out the word "majority," and insert the word "vote," as proposed by the gentleman from Washoe (Mr. Nourse.)

The question was taken, and the amendment offered by Mr. Nourse was unanimously agreed to.

Mr. PROCTOR. Now I move to strike out the word "elected," where it relates to the vote of two-thirds of the members, and insert the word "present." It occurs twice I believe in the section, and my motion is to make the amendment in both cases.

The PRESIDENT. The gentleman from Nye, in making his motion, will understand that it requires the unanimous consent of the Convention in order to amend, but his object can be reached by a motion to recommit to a special committee, with instructions to amend in this particular respect.

Mr. PROCTOR. I will make that motion, if there is any objection.

Mr. HAWLEY. I would like to inquire if this amendment would not interfere with some of the provisions which we have already agreed upon, or the general principles which govern them? We require a majority of all the members elected to pass a bill, and this section requires a larger vote, to wit, two-thirds, to pass it over the Governor's veto.

The PRESIDENT. It does not necessarily involve the preceding sections. This section refers only to bills which may be vetoed by the Governor, although possibly, by analogy, we should provide that they should be passed only by a majority of two thirds, since we require a clear majority to pass bills in the first instance.

Mr. HAWLEY. But will it not involve hereafter some question as to the legality of legislative action, under the provision as it stands? Will it not be a question, if we merely strike out the word "elected," whether we thereby definitely determine that a vote of two thirds of those present shall be sufficient? That two thirds might be less than an absolute majority. I think it is a matter which demands serious consideration, and I address my inquiry to the Chair because I presume the President understands the matter fully.

The PRESIDENT. There can be no doubt that if it be the sense of the Convention, we may make this difference, in one case requiring a vote of two-thirds of the members present, and in the other, a majority of all the members elected. There would be quite an obvious difference; and it is so apparent that I do not think any question whatever could arise.

Mr. HAWLEY. My remarks were based upon the supposition that we were going to require a two-thirds vote of all the members elected, to override the Governor's veto. I am quite unwell to-night, being hardly able to attend, and it is quite likely that I do not fully understand the question before the Convention.

The PRESIDENT. I would suggest that if this language is to be amended at all, it should be made to read "two-thirds of the members present and voting in each house."

Mr. PROCTOR. Very well; I will make the motion in that way.

Mr. BANKS. I am opposed to the proposed amendment, and for this reason: that if we adopt this provision of the Constitution—

The PRESIDENT [interrupting.] Does the Chair understand the gentleman from Humboldt to object?

Mr. BANKS. Yes, sir.

Mr. PROCTOR. I move to recommit the article to a special committee, with instructions to make the amendment. [Cries of "question, question!"]

Mr. BANKS. Now, Mr. President, I will state briefly, if I may be allowed, the reasons why I oppose this change. It is the presumption of the people of the State, when they elect a legislative body, consisting say of thirty, sixty, or any other number of men, that their laws are to be made through the exercise of the united wisdom of that body of men; but by the change now proposed, a very small proportion of that body—two-thirds of a majority, for instance—can pass a law over the veto of the Governor. That is not in accordance with the spirit in which the people act in electing their legislative body. It would operate badly in practice, too, because members would feel no such responsibility as would compel their attendance upon the duties which they are elected to perform. I have seen enough of that loose sort of legislation, where each man conceives that he has the right to go away when he pleases and neglect his duties, to lead me to the conclusion that we ought to incorporate into our Constitution everything we can, which is calculated to make members of the Legislature feel that they have responsibilities resting upon them—that they are responsible for their absence from legislative duties, as much as they are for an indifferent or wrong performance of those duties. If we can do that, it will certainly have a beneficial effect. If we adopt this amendment proposed by the gentleman from Nye, we thereby discriminate in favor of legislating by a comparatively small number of those who are sent to the Legislature by the people; while if we refuse to adopt the amendment proposed, we, on the other hand, discriminate very strongly in favor of compelling every man who is elected to a legislative body to spend his whole time in that body, in the performance of his duties.

Mr. McCLINTON. I hope the gentleman from Humboldt, who has just spoken, will pardon me for so persistently calling the question. I did not mean to deprive him of the privilege of making a lengthy speech, to prove what I presume four-fifths of the members here already see clearly in this respect. I agree with him upon this question in every particular, and I believe the Convention generally concurs, that the vote of two-thirds of all the members elected, shall be required to pass a law over the Governor's veto. That is all I have to say.

Mr. DUNNE. One point to be considered in connection with this amendment is this: that it would require a less number of votes to pass a bill over the Governor's veto, than would be required to pass it originally. I will here suggest, also, although it is not material

to the question immediately before the Convention, that this same amendment would have to be made in Section 3 of Article I—the Declaration of Rights—where it is provided that the Legislature by a law passed by a two-thirds vote of all the members elected to each branch thereof, may change the constitutional provision in regard to finding a verdict. I believe that is the language which was adopted in that section upon my own motion.

Mr. HOVEY. I would like to ask one question. By a preceding section, it is provided that no law shall pass except by the vote of a majority of all the members elected. Now, under this section as proposed to be amended by the gentleman from Nye, could they not pass a bill by a two-thirds vote of those present, and by a less vote than a majority of all the members elected?

Mr. DUNNE. I will answer the gentleman's question. If that amendment were adopted, the Constitution would read exactly in this way:—

"If after such reconsideration it again pass both Houses by ayes and noes, by a majority of two-thirds of the members present and voting in each House, it shall become a law, notwithstanding the Governor's objections."

Mr. HOVEY. Would not that two-thirds require to be more than one-half of all the members elected?

Mr. DUNNE. No, sir.

Mr. HAWLEY. Suppose a House were composed of sixty members; then thirty-one members would constitute a quorum, and it would require thirty-one votes to pass a bill in the first place. Then, if that bill should be vetoed, it would return to the House, and under this provision, it might pass over the Governor's veto, by receiving only twenty-two votes, in case there were only a quorum present. I do not think it is necessary to say anything more than that, to defeat the proposition. It is in itself, I must say, so monstrous an absurdity, that it is only necessary to look at the matter in the light of a few figures, to secure its condemnation by the Convention.

Mr. ST'VANT. I rise to a point of order. I am not very familiar with Jefferson's Manual, but there is one thing which I think I recollect clearly, and that is, that when a proposition is once made and lost, that is supposed to be the judgment of the House, and it is final. Now, my recollection is perfectly clear that this same motion was made, I think by myself, some time ago, and in exactly the same language, and it was then voted down.

The PRESIDENT. The Chair has no recollection of such a motion in reference to this particular section; but if the same motion had been made and voted down at a former stage, either in Committee of the Whole or on the second reading, it would, nevertheless, be perfectly competent to propose it again at this stage. The point of order, therefore, is not well taken.

Mr. PROCTOR. In regard to this proposition being so monstrous, as the gentleman from Douglas (Mr. Hawley) supposes it to be, I will say that I regard the proposition made in the first place, requiring a two-thirds vote of all the members elected, as a greater monstrosity. The section as it originally stood, was emphatically monstrous; and I would be in favor, rather than adopt it, of striking out all power whatever to pass a law over the veto of the Governor, because this section, as it now stands, virtually deprives the Legislature of any such power. If we allow it to remain, the Governor and a few absent or captious members can together keep the Legislature in session a whole year without enacting any laws whatever. I think we might as well make a provision that the Legislature shall pass no law at all, without the consent of the Governor.

The question was taken on Mr. Proctor's amendment, and it was not agreed to.

COMPENSATION OF MEMBERS.

Mr. BROSNAN called for the reading of Section 33, as engrossed.

The SECRETARY again read the section.

Mr. BROSNAN moved to amend Section 33 by striking out the word "the" before the word "compensation," where the latter word occurs the second time, and inserting instead the word "such," so as to read, "but no increase of such compensation shall take effect," etc.

By unanimous consent the Secretary was instructed to make the amendment.

Mr. McCLINTON. I will ask if there is any provision made here by which the members will receive mileage?

The PRESIDENT. That is left to the Legislature to fix. It is contemplated, as I understand, that at the first session a law will be passed fixing the mileage for members of future Legislatures, and in the Miscellaneous Provisions, or Schedule, it is proposed to provide for the first Legislature.

Mr. McCLINTON. Their incidental expenses are provided for in this section, but there is no provision for mileage.

The PRESIDENT. Their compensation for services will include mileage, and that, as a matter of course, will be provided by law.

THE HOMESTEAD.

Mr. McCLINTON. Would it be in order, before taking the vote on the final passage of this article, to move to strike out Section 30? I am one of those who believe that the aggregate wisdom of this Territory is not bound up in this body. I know there was a little wisdom remaining in Esmeralda when I left, and possibly that may happen to be sent to the first Legislature. I am opposed most emphatically to encumbering this instrument with special legislation.

The PRESIDENT. The Chair is under the impression that at a former stage of our pro-

readings, since this article has been on its third reading, a motion was made and lost to strike out that section. If the Chair is correct in that impression, the motion will not be in order.

Mr. NOURSE. I think the Chair is not correct. I made such a suggestion, I know, and stated that I would be glad to see it stricken out, but I do not think there was any formal motion made or acted upon.

The PRESIDENT. The Secretary informs me that he thinks such a motion was made.

Mr. McCLINTON. If the motion has not been made, I now make the motion.

The PRESIDENT. The Secretary now informs me that upon examination he finds that he was mistaken, and that there has not been such a motion.

Several gentleman objected to the proposed amendment.

The PRESIDENT. The amendment being objected to, can only be made by referring the article to a special committee, or to the Committee of the Whole with instructions to strike out the section.

Mr. McCLINTON. I move that the whole article be referred to a special committee of three, with instructions to strike out Section 11, and report immediately.

The question was taken, and the motion was not agreed to.

Article IV having been read a third time, as follows:—

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SECTION 1. The Legislative authority of this State shall be vested in a Senate and Assembly, which shall be designated, "The Legislature of the State of Nevada," and the sessions of such Legislature shall be held at the seat of Government of the State.

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday of January next ensuing the election of its members, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation, except as hereinafter provided in this Constitution.

SEC. 3. The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November, and their term of office shall be two years from the day next after their election.

SEC. 4. Senators shall be chosen at the same time and places as members of the Assembly, by the qualified electors of their respective districts, and their term of office shall be four years from the day next after their election.

SEC. 5. Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one-third, nor more than one-half of that of the members of the Assembly.

SEC. 6. Each House shall judge of the qualifications, elections and returns of its own members, choose its own officers, (except the President of the Senate), determine the rules of the proceedings, and may punish its members for disorderly conduct, and, with the concurrence of two-thirds of all the members elected, expel a member.

SEC. 7. Either House, during the session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House by disorderly or contemptuous behavior in its presence; but such imprisonment shall not extend beyond the final adjournment of the session.

SEC. 8. No Senator or member of Assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by election by the people.

SEC. 9. No person holding any lucrative office under the Government of the United States, or any other power, shall be eligible to any civil office of profit under the State; provided, that Postmasters whose compensation does not exceed five hundred dollars per annum, or commissioners of deeds, shall not be deemed as holding a lucrative office.

SEC. 10. Any person who shall be convicted of the embezzlement or defalcation of the public funds of this State, or who may be convicted of having given or offered a bribe to procure his election or appointment to office, or received a bribe to aid in the procurement of office for any other person, shall be disqualified from holding any office of profit or trust in this State; and the Legislature shall, as soon as practicable, provide by law for the punishment of such defalcation, bribery or embezzlement, as a felony.

SEC. 11. Members of the Legislature shall be privileged from arrest on civil process during the session of the Legislature, and for fifteen days next before the commencement of each session.

SEC. 12. When vacancies occur in either House, the Governor shall issue writs of election to fill such vacancy.

SEC. 13. A majority of all the members elected to each House shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each House may prescribe.

SEC. 14. Each House shall keep a journal of its own proceedings, which shall be published, and the ayes and noes of the members of either House on any question shall, at the desire of any three members present, be entered on the journal.

SEC. 15. The doors of each House shall be kept open during its session, except the Senate while sitting in executive session, and neither shall, without the consent of other, adjourn for more than three days, nor to any other place than that in which they may be holding their sessions.

SEC. 16. Any bill may originate in either House of the Legislature, and all bills passed by one may be amended in the other.

SEC. 17. Each law enacted by the Legislature shall embrace but one subject and matter, properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title; but, in such case, the act, as revised, or section, as amended, shall be re-enacted and published at length.

SEC. 18. Every bill shall be read by sections on three several days, in each House, unless, in case of emergency, two-thirds of the House where such bill may be pending, shall deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on the final passage of every bill, or joint resolution, shall be taken by ayes and noes, to be entered on the journals of each House; and a majority of all the members elected to each House, shall be necessary to pass every bill, or joint resolution; and all bills or joint resolutions so passed, shall be signed by the presiding officers of the respective Houses.

SEC. 19. No money shall be drawn from the treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at every regular session of the Legislature.

SEC. 20. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: Regulating the jurisdiction and duties of Justices of the Peace and of Constables; for the punishment of crimes and misdemeanors; regulating the practice of courts of justice; providing for changing the venue in civil and criminal cases; granting di-

vorces; changing the names of persons; vacating roads, town plats, streets, alleys, and public squares; summoning and empanneling grand and petit juries, and providing for their compensation; regulating county and township business; regulating the election of county and township officers; for the assessment and collection of taxes for State, county and township purposes; providing for opening and conducting elections of State, county, or township officers, and designating the places of voting; nor providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities.

SEC. 21. In all cases enumerated in the preceding sections, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

SEC. 22. Provision may be made by general law for bringing suit against the State as to all liabilities originating after the adoption of this Constitution.

SEC. 23. The enacting clause of every law shall be as follows: "The people of the State of Nevada, represented in Senate and Assembly, do enact as follows:—" and no law shall be enacted except by bill.

SEC. 24. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

SEC. 25. The Legislature shall establish a system of county and township government, which shall be uniform throughout the State.

SEC. 26. The Legislature shall provide for the election of a Board of County Commissioners, in each county, and the County Commissioners shall jointly and individually perform such duties as may be prescribed by law.

SEC. 27. Laws shall be made to exclude from serving on juries all persons not qualified electors of this State, and all persons who shall have been convicted of bribery, perjury, forgery, larceny or other high crimes, unless restored to civil rights; and laws shall be passed regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult or other improper practice.

SEC. 28. No money shall be drawn from the State treasury as salary or compensation to any officer or employee of the Legislature, or either branch thereof, except in cases where such salary or compensation has been fixed by a law in force prior to the election or appointment of such officer or employee; and the salary or compensation so fixed shall neither be increased nor diminished so as to apply to any officer or employee of the Legislature, or either branch thereof, at such session; *provided*, that this restriction shall not apply to the first session of the Legislature.

SEC. 29. The first regular session of the Legislature under this Constitution may extend to ninety days, but no subsequent regular session shall exceed sixty days, nor any special session convened by the Governor exceed twenty days.

SEC. 30. A homestead as provided by law, shall be exempt from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sales or taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon; *provided*, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife, and laws shall be enacted providing for the recording of such homestead within the county in which the same may be situated.

SEC. 31. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

SEC. 32. The Legislature shall provide for the election by the people of a Clerk of the Supreme Court, County Clerks, County Recorders, who shall be *ex officio* County Auditors, District Attorneys, Sheriffs, County Surveyors, Public Administrators, and other necessary officers, and fix by law their duties and compensation. County Clerks shall be *ex-officio* Clerks of the Courts of Record in and for their respective counties.

SEC. 33. The members of the Legislature shall receive for their services a compensation to be fixed by law, and paid out of the public treasury; but no increase of such compensation shall take effect during the term for which the members of either House shall have been elected; *provided*, that an appropriation may be made for the payment of such actual expenses as members of the Legislature may incur for postage, express charges, newspapers and stationery, not exceeding the sum of sixty dollars for any special session, to each member; *and furthermore provided*, that the Speaker of the Assembly, and Lieutenant-Governor, as President of the Senate, shall each, during the time of their actual attendance as such presiding officer, receive an additional allowance of two dollars per diem.

SEC. 34. In all elections for United States Senator, such elections shall be held in joint convention of both Houses of the Legislature. It shall be the duty of the Legislature which convenes next preceding the expiration of the term of such Senator, to elect his successor. If a vacancy in such Senatorial representation from any cause occurs, it shall be the duty of the Legislature then in session, or at the succeeding session thereof, to supply such vacancy. If the Legislature shall at any time as herein provided, fail to unite in a joint convention within twenty days after the commencement of the session of the Legislature for the election of such Senator, it shall be the duty of the Governor, by proclamation, to convene the two Houses of the Legislature in joint convention, within not less than five days nor exceeding ten days from the publication of his proclamation, and the joint convention, when so assembled, shall proceed to elect the Senator as herein provided.

SEC. 35. Every bill which may have passed the Legislature, shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not he shall return it, with his objections, to the House in which it originated, which shall enter such objections upon the journal, and proceed to reconsider it. If, after such reconsideration, it again pass both Houses by ayes and noes, by a vote of two-thirds of the members elected to each House, it shall become a law notwithstanding the Governor's objections. If any bill shall not be returned within five days after it shall have been presented to him, (Sunday excepted,) exclusive of the day on which he received it, the same shall be a law, in like manner as if he had signed it, unless the Legislature, by its final adjournment, prevent such return, in which case it shall be a law, unless the Governor, within ten days next after the adjournment, (Sunday excepted,) shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the Legislature at its next session in like manner as if it had been returned by the Governor; and if the same shall receive the vote of two-thirds of the members elected to each branch of the Legislature, upon a vote taken by ayes and noes, to be entered upon the journals of each House, it shall become a law.

No further amendment being offered, the question was taken by yeas and nays on the final passage of the article, and the vote resulted: yeas—24; nays, none—as follows:—

Yeas—Messrs. Banks, Belden, Brady, Brosnan, Chapin, Collins, Crawford, Crosman, DeLong, Dunne, Fitch, Frisell, Gibson, Hawley, Hovey, Hudson, Kennedy, Mason, McClinton, Nourse, Sturtevant, Tone, Wetherill, and Mr. President—24.

Nays—none.

So the Article was passed.

On motion of Mr. NOURSE, at twenty minutes after ten o'clock, P. M., the Convention adjourned.

TENTH DAY.

CARSON, July 14, 1864.

The Convention met at nine o'clock, A. M., and was called to order by the President.

The roll was called, and all the members responded except the following: Messrs. Ball, Hault, Haines, Jones, Nourse, Parker, Tagliabue, Warwick, Wellington, and Williams. Present, 30; absent, 10.

Prayer was offered by Rev. Mr. NIMS.

The journal of yesterday was read, corrected, and approved.

Mr. FITCH moved that the official Reporter be authorized to omit from his report the proceedings under the call of the House, last evening.

The question was taken, and the motion was agreed to.

QUESTION OF PRIVILEGE.

Mr. DUNNE. I rise to a question of privilege, for the purpose of inviting attention to the reports of our proceedings here, as published in the *Union* and *Enterprise*. I discover some inaccuracies, in these reports, which I think it will be well to correct, for the reason that advantage will be taken, and capital made out of them, against the Convention and against the Constitution, if it is not done. [Merriment.] It is well known to all that I am opposed to this Constitution, but I wish to see no opposition made to it except upon just and reasonable grounds, and not upon any unfair advantage which might be taken in that way. One of the corrections which I wish to make is a matter personal to myself. The error appears in the *Virginia Union*, and as a preliminary I will say that it is not a matter of wonder to me that such mistakes occur, but the wonder is that they do not occur oftener. I am represented in the *Union* as saying, in regard to the article on the Right of Suffrage, that in the excited state of the public mind it would be impossible to get a fair vote if the word "disloyal" should be stricken out; whereas, it is well known that I took exactly the opposite view, namely: that in order to remove the subject from the passions of men, the word "disloyal" should be stricken out.

Then again, in the *Enterprise* there is an error on another question in regard to a vote of the Convention. I submitted an amendment requiring that every person applying to have his name registered as an elector should take and subscribe an oath of allegiance to the State and General Governments, and instructing a committee to draft an oath for that purpose, and report it to the Convention upon the succeeding day. To that resolution of instructions an amendment was offered providing that every person, when making application to be registered, shall, upon being challenged on account of disloyalty, take and subscribe on oath, &c. I opposed that amendment for this reason: that I thought it was legislation directed especially against a special class — that it would be said that one class arrogated to itself the right of voting without being subject to this requirement, and that if that amendment should be adopted, it would leave it in the power of any man at any time to brand another as disloyal, by denouncing him to the Registrar. I opposed the amendment, and it was rejected by the Convention; but the report in the *Enterprise* says it was "passed, without a division."

Mr. FITCH. It is probably a misprint for "lost."

Mr. DUNNE. According to that report, it would appear that the Registrar should only demand the taking of the oath upon the party being challenged, and that I believe is incorrect. And now, to show what advantage is taken of these points in a canvass, I will state that the canvass has already begun in our county, and I have been required to defend the positions of our party, and to meet and repel arguments like this, advanced by a leading man of the opposing party, a lawyer in our county: At a large meeting there he attempted to prejudice the audience against the party of the Union by declaring—and as I was in the room he addressed his remarks particularly to me—that the members of this Convention were bound by their solemn oaths to incorporate a clause in the Constitution allowing negroes to vote, and if they did not do that they would violate their oaths. He doubted which they would do, but thought that from policy they would violate their oaths. In proof of this position, he read from the Enabling Act a provison that the Constitution when formed shall be republican, and not repugnant to the Constitution of the United States and the principles of the Declaration of Independence, and then he quoted the Declaration of Independence as declaring that "all men are created free and equal," and quoted it incorrectly, for the word "free" does not occur in that sentence of the instrument. He then went on like this: "Now, gentlemen," said he, "here is the Enabling Act, which requires them to embody the provisions of the Constitution of the United States and the Declaration of Independence in their Constitution, and they are obliged to include those provisions, one declaring all men free and equal; and if negroes are free and equal with white men, of course they must have the right to vote." Now when men will make such statements as that, there can be no doubt that they will also take advantage of an error of this kind, if it is not corrected, as I trust it will be in the *Enterprise*. They will say that amendment was adopted in such a shape that any person applying to the Registrar as a voter will be required to take that oath only in case he is challenged for disloyalty; whereas, by the action of the Convention it is well known that the requirement to take the oath applies to all men alike.

Mr. DeLONG. In this connection I will call attention to a very funny error in the *Union's* report of my remarks. It says here "He had no fears but that the rebellion would be crushed, but that the suits arising from it would live for a hundred years to come." I really do not know what that means.

Mr. NOURSE. Perhaps the gentleman had a professional idea in his mind.

Mr. FITCH. I imagine it is a typographical error. The word may have been "fruits" instead of "suits."

The PRESIDENT. As to the action had by the Convention on the amendment I offered to the motion of the gentleman from Humboldt, (Mr. Dunne,) there is no question but that it was voted down with great unanimity, and the minutes exhibit that fact.

Mr. FITCH. I do not think the Convention had better spend its time in correcting the errors of the press. If we do we shall have plenty of business on hand. By way of illustration, I will state that I telegraphed to my paper, that the Convention had struck out the section prohibiting a Sole Trader law, and by some strange blunder they printed it in the dispatch that the Convention had adopted it, which is just the reverse, though the dispatch was plainly written.

Mr. NOURSE. Probably they did not believe you.

Mr. DeLONG. As to this language attributed to me, I do not understand it.

The PRESIDENT. That may have been the condition of the reporter; perhaps he could not understand it.

CORPORATIONS.

The Secretary called attention to the fact that Article VIII, entitled Municipal and other Corporations, had been retained in his hands, although partially engrossed, at the instance of Mr. Warwick, who gave notice that he wished to offer an amendment.

Mr. FITCH. I have an amendment to offer to one section of that article.

Mr. BANKS. Inasmuch as the gentleman from Lander (Mr. Warwick) is temporarily absent, and I know he is desirous of offering his amendment, and inasmuch as the gentleman from Storey also wishes to offer an amendment, I move that we go into Committee of the Whole, the President remaining in the chair, on the next article before that committee, which is Article X, entitled Taxation.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (the President remaining in the Chair,) and resumed consideration of Article X, entitled Taxation.

TAXATION.

The CHAIRMAN. When this article was last before the Committee, an amendment was pending, offered by the gentleman from Storey, (Mr. Tozer,) to strike out the words "including mines and mining property." Also an amendment offered by the gentleman from Humboldt, (Mr. Banks,) to strike out only the words "mines and," and also to add at the end of the section the words: "*Provided*, that in the taxation of mines, the proceeds only shall be taxed."

The question was taken on Mr. Banks' amendment, and it was not agreed to.

The question recurred on the amendment offered by Mr. Tozer, to strike out the words "including mines and mining property," so that the section would read as follows:—

SEC. 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such property only as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes."

[Mr. Lockwood in the Chair.]

Mr. JOHNSON. I believe the section, in the condition in which it stands now, is open to amendment, as there is but one amendment pending. I will not, however, present the amendment which I desire to offer at this stage of the proceedings.

Mr. HAWLEY. I ask that the gentleman's amendment be read for information.

Mr. JOHNSON. I do not desire to embarrass this subject with a multiplicity of amendments, which possibly might confuse the judgment of members, but for the information of the Convention, I will state what course of action I propose, when this amendment now under consideration shall have been either adopted or rejected. I shall move to strike out the section as it occurs in our printed basis, either with or without any of the amendments which have been offered, and insert the following, as a substitute for the entire section:—

SECTION 1. The Legislature shall provide by law for the assessment and collection of taxes by a uniform rule, so that taxes shall be assessed and collected on all property, possessory rights, and claims, according to their true value in money.

It is the same amendment which I read for the information of the Convention on a former occasion.

Mr. TOZER. I shall not trouble the Convention with remarks of any length upon this question, at this time, and I hope I shall not feel it my duty to do so at any time. I rise now simply to say that the amendment, as originally proposed by myself, striking out the last clause of the section, which follows the words, "both real and personal," would leave the section, in my judgment, in such a shape that it will be acceptable to the voters of this Territory, who are to deliberate and decide upon the question of a State Government. I cannot conceive how the Convention can leave the taxation clause in a better shape than that. It simply places in the hands of the Legislature,

which is to succeed us, the power and authority to raise revenue for the support of the State Government by a uniform and equal rate of taxation upon all property, both real and personal. If this view will not meet with the attention and cooperation of the delegates on this floor, both from the agricultural and the mining counties, I can hardly conceive what will. I sincerely hope that the Convention will be able to get over this "Hog's-Back" in our business, by simply adopting the amendment I have offered.

Mr. JOHNSON. I will not occupy any considerable part of the time of the Convention in discussing this matter, but there is one proposition which I wish to present clearly to the minds of the Convention. The question is, whether it is or is not the intention, by the adoption of the amendment offered by the gentleman from Storey, (Mr. Tozer,) to tax the mines! Or whether, on the other hand, it is the intention of the Convention to do something, the effect of which will be to confuse and deceive the public mind on that subject? Now, sir, as I expressed myself on a previous occasion—and the responsibility of which position I am willing to assume before the people of this Territory—I do not want to leave this question one of doubt and uncertainty; that is, in such a condition as will be calculated to deceive the public mind. I repeat, sir, that unless all property that has a cash value in the market is subjected to taxation, unless we have a government founded on those immutable principles of justice, equity and right, I, for one, want to be far distant the day when we shall adopt a State Government. That is the issue which I wish to have presented, and I do not want it confused or mystified by language which may be susceptible of different constructions. I will not consent, by the adoption of the language of the California Constitution, and the consequent precedent afforded by the example of that State, to appease the consciences of gentlemen who shall be sent here as members of our Legislature, and, with uplifted hands, swear before Almighty God to support the Constitution. I do not wish to adopt such language that they may feel justified, after taking that oath, in turning around and palpably violating the express provision of the instrument they have sworn to support, because, forsooth, the action of California, under a similar constitutional provision, has, for fourteen years, been of the same character. No, sir; I will consent to nothing of that kind, and I entreat and beg of gentlemen of the Convention to incorporate no language in this instrument which is susceptible of more than one construction, but to adopt language which every person can understand. Let us take the responsibility, one way or the other. Let us say, plainly, that one-fourth of the property of the State shall pay all the expenses of the government, or on the other hand, let us declare that all property which has a cash value in the market, in proportion to that cash value shall be subjected to the burden of taxation.

This is, in brief, my position. I conceive that it is not necessary to discriminate, or to specify the particular species or classes of property, aside from the terms we employ in this section which I offer as a substitute for the entire section under consideration. If we were to do that, it would possibly be necessary to go into an extended enumeration and description of all kinds of property. But, I repeat, to avoid the like evils which have grown up under the legislation of our sister State of California under a similar provision, to escape the consequences of such legislation, to deprive members of our Legislature of the pretext, with which to appease and satisfy their consciences, that because the Legislature of that State, bound by a similar provision, has been, as I conceive, for the last fourteen years palpably violating the oath which the members of that Legislature have taken, therefore they may pursue the same course—to avoid this consequence, I say, I want such language incorporated here, as cannot, by any possibility, leave it a matter of doubt or question what we mean. If other gentlemen desire to present the proposition distinctly and unmistakably that a portion of the property of the country shall pay all the taxes, and another portion shall be exempt from taxation, then I appeal to them to come out like candid men and distinctly enunciate in the organic law of our State, the rule, that mines and mining property shall not be taxed. Then we shall know what we are doing. Then we can have a square vote, and our constituencies will know, now, and in all time to come, what we do mean, and what is to be the understanding of our action by the Legislature. Any expression less explicit than this, I should not be content to see incorporated in the Constitution.

Mr. DELONG. I had hoped that this question might come to a vote without further discussion. I asked my colleague (Mr. Tozer) not to make any remarks which might open the way for a protracted discussion, and he did not do so until the gentleman from Ormsby, (Mr. Johnson) opened the debate. We proposed to have a vote without discussion, but now, I think it would be impossible.

Mr. JOHNSON. In reply to the gentleman, I will suggest this: that a few days ago, the gentleman from Storey, (Mr. DeLong,) did himself speak very extendedly on this question, and other gentlemen did the same; and at that time, for about eight minutes, I addressed the Convention, but was cut short by the hour of adjournment, and of course it was understood and recognized as a matter of courtesy, to say nothing of right, that I should have an opportunity to conclude. And that I might do so, and thereby render my views on this question understood—and not to provoke discussion—have I to-day claimed the attention of the Convention.

Mr. DeLONG. Certainly, by no words of mine, would I cast any censure upon the gentleman from Ormsby, our President, for making any remarks, upon any question, at any time, or on any occasion he pleases. It is a privilege which I always avail myself of, regardless of any censure which I might incur from any source, and I concede the right to others to do the same. But I thought this matter had been so long canvassed, not only by members of the Convention, but also by the people and the press of the whole Territory, that every member's mind must be firmly made up, and that we might as well march right up to the scratch, declaring expressly what will be our course of action, without any further talk. Now, what is the use of my going through the field of argument on our side, to show that this amendment suggested by the gentleman from Ormsby would be wrong? Could I hope to convince any one of these agricultural members that it is wrong? No, sir. Neither can men, with actual or assumed indignation mantling to their brows, convince me that I am wrong when I say that a tax, as proposed by this section, upon mining property, is onerous and unjust.

Now, sir, while I concede to gentlemen on the opposite side credit for candor and sincerity, I ask the same concession from them to me. I do not believe this is right, as it stands. Sir, when members representing mining constituencies in the former Convention, arose and insisted with unanswerable logic that property in mines was no property at all, but a mere hope and expectation, what was the reply of these agricultural gentlemen? Why, that a mine was as much property as a farm; and they have insisted, and do insist upon the same thing to-day. Now, for the sake of consistency, I say, do not abandon that position; but if you assert it, maintain it throughout. And when you have gone thus far—when you have said all property, both real and personal, shall be taxed, have you not gone far enough, if mines really are property? In the name of conscience, why would you add those words which will make this Constitution odious to the great mass of the people of this Territory? Why insist on retaining those words, "mines and mining property," which we are proposing to strike out? There is and can be but one reason for it. They insist that mines are property, yet, although they do not name farms and barns and buildings, and so on, they nevertheless insist on naming here our particular species of property. They can give but one reason for it, and that is the one advanced by the gentleman from Ormsby, (Mr. Johnson,) who says that he wishes to make it so plain that men occupying legislative positions under the Constitution, shall not be able to do otherwise than tax the mines, without a violation of that oath which every one takes in the presence of Almighty God. Now, sir, I reply to that gentleman, that his argument is bad. If it be true that mines are property as much as farms, and buildings; and if it be true that a man coming to the Capital here as a legislator, under the Constitution, will tax that latter description of property, without taxing the mines, and thereby violate his oath, then, I say, such a man will violate his oath just as readily with that provision in, as he will with it out. You cannot provide, by any stringency of law, against wrong-doing by a man who is naturally a wrong-doer. If a man comes here, dictated by the prejudices of his constituents, or his own determination not to tax the mines, he will do it no sooner with this provision in, than he will with it out.

Our only object is, not to avoid taxation, but that we may remove from this article what appears to be a studied insult to our constituents. We wish to remove that offensive language which brought down upon the old Constitution the condemnation of the people of this Territory—to remove an objection and a reproach which last fall caused the State organization to be buried deep under the people's feet, instead of being adopted, as it would have been if that clause had not existed in the Constitution. If then, we want a new State—which I suppose is the desire of all of us—if we wish to step into the circling sisterhood of the Union as a sovereign State—we cannot hope to do it with a Constitution containing a clause which has met with the people's express disapproval, time and time again. Strike that out, and then if you have other amendments to propose, we are ready to meet you on fair and equal ground, so far as we can. But we insist that it is useless to go over the whole argument—on the one side that the mines are property, and on the other side that they are not. Leave us to stand on the same broad and complete platform of equality with yourselves, and do not apply yourselves to the task of compelling the members of the Legislature to do their duty. They are responsible to their constituents, and to their God, for any violation of their oaths, or any wrong-doing whatsoever.

Mr. STURTEVANT. Will the gentleman permit me to ask him a question? He assumes the responsibility of saying that the Constitution was beaten last year in consequence of this mining clause; now I ask this question: If that be the case, why did the Legislature since that time, pass an act which is now among the territorial statutes, amounting to the same thing as that which this clause provides for? I refer to the provision in the present revenue law for taxing the mines.

Mr. DeLONG. My dear sir, not having been one of the members of that Legislature, and their intentions and motives being inscrutable, I could not answer the question. I do not know what in the world they did it for; but I will say this, that they only did what we are perfectly willing they should do. I insist upon it as a proposition not to be disputed, that the mining community are willing that the mines should be taxed. And they will come here by

their representatives, as a State, as they did last winter, by their representatives, as a Territory, ready to vote for a revenue bill which will tax the mines.

But they say, nevertheless, that you shall not incorporate a provision into the Constitution, which appears to be devised, as it were, from a motive of vengeance and hate towards their especial interest. Why do you say that mines and mining property shall be taxed? It looks as if it were a studied effort—as if you were seeking to reach us, beyond a peradventure, while other interests might escape. But I am willing, in order to meet the demands of the occasion, in order to try and adopt a compromise between ourselves, in order to try and frame up a Constitution which will be adopted by the people, to abandon the position which I had at heart, to wit: a provision that nothing but the proceeds and improvements of mines, and not the mines themselves, should be taxed. That is the position which I believe to be correct and just; but, with the hope of obtaining some ground which will be common ground, I am content to adopt the amendment of my colleague, (Mr. Toner,) inasmuch as I believe if you adopt that at once, it will allay all hostility against the Constitution among the miners, and you will, at the same time, reach precisely the same result as you would by the adoption of the clause of the article which we propose to strike out. That is my wish, and I do hope we shall come to a vote with as little debate as possible.

If it is the will of the Convention, nevertheless, that we shall have a clause taxing mines as other property—although I protest against it—yet if this objectionable language only be removed, I will leave this hall and return to my constituents, ready to do all I can to secure the adoption of the Constitution, under the necessities which are upon us. But, in the name of my constituents, I ask for the removal of this language of reproach.

Mr. FITCH. It seems to me that if those gentlemen who are opposed to the mines being taxed, were imbued with the spirit which the friends of mining taxation ascribe to them, they would not take the position which they have assumed on this floor. If I were as much opposed to mining taxation as I am in favor of it—if I were as strongly opposed to a tax being levied upon the market value of the mines as I am in favor of a tax of that kind—I should be satisfied with nothing less than a clause declaring that mines and mining property shall not be taxed. I would contend that it should be stated directly and plainly, that the mines shall not be taxed. And I think that the gentlemen who, differing with me, are opposed to taxing the mines, are acting with a great deal of liberality, and exhibiting a commendable spirit of compromise, in proposing merely to strike out the words, "including mines and mining property."

Now, sir, the gentleman from Ormsby (Mr. Johnson) said he wished the Convention to declare distinctly that they intended either to tax or not to tax the mines.

Mr. JOHNSON. To use such language as not to leave it a matter of doubt.

Mr. FITCH. Exactly; that the Convention should adopt such language that the Legislature would have no reason for doubt. Now, sir, I think so long as the gentlemen who are opposed to taxing the mines fail to demand positive prohibition, they do all that the gentleman from Ormsby can ask. They leave the question with the Legislature, and the Legislature, in my judgment, and in the judgment of men older and more experienced than myself, if those words were stricken out, would undoubtedly have the power to tax the mines. And, as my colleague has stated, even if you go farther, and assert positively that the Legislature shall tax the mines, and leave your Constitution in that form, at last you will have to leave it to the Legislature to render the provision operative, and if they would choose to violate their oaths in one respect, they would in another. It has got at last to be a question of judicial construction.

Now, sir, I have but a few words more to say, and I will then take my seat. In regard to the remarks I made the other day, my position has been somewhat misconstrued on this subject. Some gentlemen have seemed to entertain the idea that I was in favor of so mystifying this question as to deceive the mining population, or deceive the agricultural population, by leaving the matter in doubt. Not at all. I regard it as being as clear and strong as it can be, when we say that all property shall be taxed. I regard it as being so clear as to leave no possible room for doubt. and I object to putting in the words, "including mines and mining property," because those words express a doubt in our organic law as to the intention of the mining constituencies. It is an intimation that they would refuse to obey the Constitution, and it is, therefore, as my colleague has remarked, an insult to the mining constituencies. I ask gentlemen to consider this question. Let them count the number of delegates, if they please, who are present here from the mining counties, and then the number present from agricultural counties. Let them see the large majority in the Convention—if they will pardon the allusion—of representatives of the mining interest. Let them see that the delegates from the mining counties have certainly the power, if they had the will, to insert in that Constitution a positive prohibition of the taxation of the mines. And yet we are quite content to omit the language altogether. I have said "we," because, although I am in favor of taxing the mines, yet I represent a mining constituency. I should rather say, *they* are willing to let the section be as strongly in favor of taxing the mines as it can be, without insulting those people whom they represent. Now, if you strike out those words, you still include the mines by saying that all

property shall be taxed. What is the necessity, then, of inserting that provision? It accomplishes nothing, because, as I said before, if the Legislature should choose to violate the Constitution, it would do it just as readily in one respect as in another. But, on the contrary, if you place that objectionable language in the section, you put an argument in the mouths of those who are opposed to the formation of a State Government.

One word further, and I have done. I disagree with the gentleman from Ormsby (Mr. Johnson) in one particular. He says he wants this matter definitely stated in the Constitution, and if the Convention shall fail to put it in, in unmistakable language, he would rather the Constitution itself should fail. If the Convention fails to use such language as exactly suits him, he does not want the Constitution adopted. Now, sir, I take no such position as that. If this Convention shall put in this phrase, "including mines and mining property," I believe that my colleagues, who are strongly opposed to taxing the mines, will, as well as myself, nevertheless, go before the people, and strongly urge upon them the importance of the adoption of the Constitution. It is my determination to take that course, no matter what may be put in this section. But I ask the Convention to consider this, that if you put that language in the section, you thereby place a club in the hands of your enemies, and aid them in beating out your own brains.

Mr. JOHNSON. I do not know, upon reflection, but what now is as proper a time as any to offer my amendment, and I will do so. I move to strike out Section 1 entirely, and substitute the following:—

SECTION 1. The Legislature shall provide by law for the assessment and collection of taxes by a uniform rule, so that taxes shall be assessed and collected on all property, possessory rights, and claims, according to their true value in money.

Now, sir, if there were any evidence wanted of the impracticability and the impropriety of leaving this section as it is proposed to be left by the gentleman from Storey, (Mr. Toner,) it would be found in the speeches which have been made by the two gentlemen who have preceded me. One of these gentlemen is willing to assume the position, as I understand him, that mines are property; but, the other gentleman, not content with the enunciation of his views here, recurs to the opposition, in past time, to the passage of the former Constitution, and in the most unmistakable language, declares that he does not believe that mines are property. Am I correct?

Mr. DELONG. I do not think I used that language—that I did not believe that mines are property. I believe they are not such property as should be included in taxation, beyond the proceeds and the improvements.

Mr. JOHNSON. Does the gentleman believe that the Legislature would have the right, under this section, as proposed to be amended by his colleague, to refuse to tax them as property?

Mr. DELONG. Entertaining the views of the gentleman from Ormsby, I should not.

Mr. JOHNSON. Is not that the gentleman's own view? Does he not believe that the mines should not be taxed?

Mr. DELONG. Yes, sir; my view is that they should not be taxed, any farther than the proceeds and improvements.

Mr. JOHNSON. That is the practical question. Now, shall we adopt a Constitution that will give the Legislature an opportunity to escape the responsibility of their oaths, and tax only a portion of the property of the State?

Mr. FITCH. Will the gentleman allow me to ask him a question?

Mr. JOHNSON. Most unquestionably; for I intend to ask him a question pretty soon.

Mr. FITCH. Does the gentleman believe that if the words, "including mines and mining property," were stricken out, the Legislature would have a right to tax the mines?

Mr. JOHNSON. I will tell the gentleman, and I will tell the Convention, the reasons why I desire the words, "possessory rights and claims," inserted there, very soon.

Now, we know that one of the gentlemen is in favor of taxing the mines, while the other is not. And I will say that, whatever may have been the position of the gentleman from Storey (Mr. Fitch) the other day, and whatever he may have intended to express, I certainly greatly misunderstood him if he did not take the position that he was in favor of taxing the mines, and thought that that provision would give the right to the Legislature to do so, but that at the same time he did not want the people to understand that that was what was intended by the action of the Convention. And I do not believe there is a member of the Convention here but understood that to be the position of the gentleman from Storey at the time. We are told now, that gentlemen do not want those words left in, because they are a studied affront, and an attempt to insult the people of the mining counties. To insult them how? To insult them by saying: "You, enjoying the wealth of the country—enjoying the blessings of its Government—enjoying its protection—enjoying the protection of the courts, and the expensive judicial system, which is proposed now to be increased in the way of expense, and the greater part of the time of which is to be devoted to the litigation of your rights and the protection of your property, shall pay your share—your fair share—towards the support of the Government, and of that judicial system."

Mr. DELONG. Will the gentleman allow me to ask him a question?

Mr. JOHNSON. I hope the gentleman will not interrupt me, if he pleases, till I get to a period, for I want to make the point right there. I ask again, is it an insult to say to them—enjoying those innumerable benefits and privileges—that they shall be required to con-

bute towards the expenses of the Government in proportion to what they have of this world's goods, according to its true value in money? This is the insult that gentlemen rate about. It is telling our people that if they enjoy the benefits of the Government, they must, in proportion to the property they possess, contribute to the support of that Government. If that is an insult, then I am one who does insult them. But on behalf of myself, and those whose views I represent, I maintain that it is begging the question to say that because we will not consent to the use of words of a doubtful meaning, it is an insult to any one.

Now, how far does this question affect those whom I represent on this floor? Why, sir, the Enabling Act, by the authority of which we are here assembled, expressly provides that the property of the Government shall not be taxed. The mines are confessedly the property of the Government, but the possessory right is in individuals. Now, the ranch which I hold west of this city, belongs to the Government, also, and all the right I have is a possessory claim. I am willing to be taxed on that, and I propose that my constituents, who are mainly agricultural people, and few of whom have any right to the lands they occupy but a right of possession, the fee being in the Government, shall also be taxed; whereas, this section, as it would stand amended on the motion of the gentleman from Storey, (Mr. Tozer,) would entirely exempt all of us who have only possessory rights in our ranches, from taxation. So far as I am concerned, leaving it as the gentleman from Storey proposes—leaving out the words, "possessory claims and rights"—it would stand about this way: I should be taxed about one-fifth as much as I would be by the amendment which I have offered.

Mr. DeLONG. Has the gentleman found the place for my question, yet?

Mr. JOHNSON. I am ready.

Mr. DeLONG. Suppose you leave it as it is in the original printed bods, and after "mines and mining property," insert the words, "also possessory claims to the public lands, the title of which is in the United States"?

Mr. JOHNSON. In contradistinction to mining claims? Then I would ask to include possessory rights in mining claims, also. But those words in the amendment which I have offered, I conceive would include the possessory rights of every man, woman and child in the country to property of the Government, whether it be a mine or anything else. That language embraces, in my judgment, the right of possession, and every kind of claim to property, the fee of which is in the Government, and of course, the higher title also, when the fee has passed from the Government to the citizen. In other words, it exempts nothing. That is my proposition. I am unwilling that anything shall be exempted that has a cash value, but according to that value, everything must be assessed and taxed. Now, sir, it must be apparent, inasmuch as there is a difference of opinion among gentlemen on this floor as to whether the words "real or personal," as they are here used, would or would not embrace claims to agricultural lands or claims to mining property, that there is a necessity of employing words, the meaning of which cannot be mistaken. How often has it happened, both in this and in the former Convention, that gentlemen have insisted—and very properly—on incorporating words, and sometimes only a single word, in order to show clearly what was intended. But here, on the contrary, seems to be a studied effort to use language that shall mystify and deceive. Already, even here within our own walls, we find a conflict of opinion as to what we really do mean by the language we employ. Is that right? Is it just to those who have sent us here to frame an organic law, or will it be of any advantage to them, to introduce words which we ourselves admit to be susceptible of more than one construction? No, sir; whilst I have the honor to represent a constituency, upon this floor or elsewhere, I shall make it my object not to incorporate in any legislation, nor in this instrument which we are engaged in framing, any language, by the use of which, any mistake can arise as to the meaning intended to be conveyed. I cannot consent to adopt any phraseology here, in regard to which there can be any necessity to resort to precedent, or to the legislation of other States, in order to ascertain what has been the intention of the Convention.

Now, we are told that in future Legislatures, men would attempt to escape the binding force of their oaths with the same readiness, under the amendment I have proposed, as they would if we were to use the identical language employed in the Constitution of California. But the position I took on that subject was this: that where there has been a precedent afforded, judges and legislators will resort to that precedent, and according to a clear and well known rule of interpretation, if we adopt in the organic law of this State a provision which is copied from the Constitution of another State, wherein a construction has been given to that provision, by the mutual action of the legislative and judicial departments, we, at the same time, adopt the construction which has been given to that provision. Therefore, if we use the language of the California Constitution, the Legislature of that State having for fourteen years, by its formal action, exempted mines from taxation, why, sir, we shall have adopted the construction that they have thereby given to that provision, and our Legislature would be justified in assuming that when we adopted this provision of the Constitution, we recognized also the interpretation given to it by that Legislature. It is to avoid this consequence, and to place words there which shall clearly embrace everything that should be subject to taxation, that I offer this amendment.

I do hope that gentlemen will, by some definite mode of expression, take the position either that we shall or shall not tax the mines, and not adopt a proposition upon which they can unite, acting upon altogether different and opposite motives, on the one hand, holding that the mines can, and on the other, that they cannot escape taxation under such a provision. It must be apparent that if we leave the section as it is proposed to be left by the gentleman from Storey, (Mr. Tozer,) that would be the effect, and our fundamental law ought not to be left in any such condition of doubt and uncertainty.

Mr. FITCH. I have reduced the question which I desired to ask to writing, as I find the gentleman has nearly forgotten it. This is the question: Do you believe, or do you not believe, that under Article X, as it is in the old Constitution, with the words, "including mines and mining property," stricken out, the Legislature would have the right to tax the mines?

Mr. JOHNSON. I answer frankly, that prior to the passage of the Enabling Act by Congress, I would have said there was no doubt about it. But if it is property which belongs to the Federal Government, the fee being in the Federal Government, I do not think the section would be sufficient to embrace mining property. I am free to say that the language in the Enabling Act does, in that respect, change the merits of the case. And, in that respect, this question occupies a different position from the last Convention, as the Enabling Act was passed since the session of that Convention, and our action here must be in conformity with that Enabling Act. But it is a proposition unanimously upheld by the courts of new States, that whilst those States are inhibited from action affecting the property itself, belonging to Government, which means the fee title, yet it is competent for the Legislature to tax the possessory right, or claim of the individual, to the extent of all that right or claim is worth, be it much or little—of great or of trifling value. Whatever that right is worth—whatever may be the value of the claim—it is within the power of the State to tax it, and with the adoption of language in the organic law expressive of such meaning, it is within the power of our Legislature to subject that possessory right to taxation. On the other hand, I do not believe—I say it in all sincerity—that, with that language in the Constitution, as it is proposed to be left by the amendment of the gentleman from Storey, a single foot of the possessory rights, or claims to either the agricultural or mineral lands of the State, could be made subject to assessment or taxation for any purpose whatsoever.

Mr. COLLINS. I am here as a representative of a mining section of the Territory; but while I am here, thus representing that mining section, and am bound to defend and protect its rights, I am not here to aid in doing injustice to a section which is not a mining section. I conceive that in one sense—and a just sense—I am a representative here of the interests of this whole Territory, as well as a representative of Storey County; and I do not want the particular or local interests of my constituents so to press upon me as to compel me to feel that I have a right to do injustice to any other section of this Territory.

With these preliminary remarks, allow me to state the position which I occupy in relation to my constituents upon this question of mining taxation. Last year, in this hall, in the Convention which was called by the Legislature of the Territory, this question was most fully, ably, and elaborately discussed. The delegates from Storey County were divided upon that question, but I think a majority of those delegates, if my memory correctly serves me, voted for taxing the mines, according to this provision of Article X, Section 1, as it stands in the old Constitution. Both the newspapers in Virginia City then advocated the taxing of the mines. Now, I have yet to learn that any body of men gathered together in Storey County, have given any instructions to her representatives on that subject, and in the absence of such instructions, I feel that the voters of Storey County still regard it as an open question for each man to decide according to the dictates of his conscience, and his own best judgment.

I want to correct a mistake made by my eloquent and earnest friend and colleague, (Mr. DeLong). It is this: He tells us that the old Constitution was buried under the feet of the indignant voters of this Territory, last year, in consequence of its taxing the mines. I think that gentleman, by reviewing the facts of the case, will come to a different conclusion. Take Washoe County, for instance, whose interests from A to Z are such as would be promoted by taxing the mines, and I ask if that county did not give an almost unanimous vote against the Constitution?

Mr. DeLONG. They had local causes which controlled the vote. I spoke only of the miners.

Mr. COLLINS. So far as I was able—for I was suffering in consequence of a long and severe illness—to gather the opinions of the people at that time, I came to the conclusion that if it had not been for certain circumstances, which are well known, as for example, that men desired to lay unholy hands upon the ship of State, before it was launched, for the benefit of individuals, the opposition of every county, except perhaps that of Humboldt County, could have been overcome, and the vote would not have been against the adoption of the Constitution.

Mr. McCLINTON. Allow me to make an explanation, right there. The vote of Esmeralda County was almost solely and entirely given against the Constitution, because of that mining clause, as it was called.

COL. CRADLEBAUGH.

The CHAIRMAN. Will the gentleman suspend a moment? I see that Colonel Cradlebaugh is present, and he is invited to a seat inside the bar. [Applause.]

Col. CRADLEBAUGH came forward and took a seat within the bar.

TAXATION—AGAIN.

Mr. COLLINS. To a certain extent, I accept the suggestion of the gentleman from Esmeralda, but I do not think it accounts entirely for the vote against the Constitution. The people interested in mining, and in the various interests connected with that pursuit, may have been unwilling to support the mining clause, but even in Esmeralda County, I have no doubt they took the same ground against the Constitution as they did in other counties, and gentlemen will bear in mind, that when the people had once resolved that the Constitution should not be adopted, they naturally brought to bear every possible argument, and they found that mining clause to be a very strong and efficient one. And I repeat that, but for certain political transactions—and I refer especially to the efforts made to introduce a certain set of delegates into the State Convention here—there would not have been much opposition to the Constitution, on account of that mining clause. I speak on that subject advisedly. I admit that a great deal was said—and very ingeniously said, too—against the policy of taxing a hole in the ground, and bed-rock tunnels, and all that, and about legislating against the "poor miner," by the men who claimed to represent the "poor miner," particularly; but that "poor miner" was a humbug and a myth. He has been aptly pictured as holding in one hand a number of shares of Gould & Curry stock, a like amount of Ophir stock in the other hand, and a quantity of Savage stock protruding from his pocket behind; with rotund belly and hawk nose, and dressed like a regular San Francisco "Cent-per-Cent." That is the "poor miner," who was talked about so much. [Merriment.] The truth is, that the miners who are proposed to be protected in this way, are those men who never had any interest in our community—men who do not live here, at all. Now, I should be willing to do anything to aid the laboring classes—anything to aid that class of poor men which my honorable friend from Storey, Mr. William M. Stewart, so eloquently depicted in the last Convention, men whose hopes, he said, were about to be taxed. I would like, if possible, to exempt the poorer classes of the community—those who are delving in the mines, and trying to strike something valuable, and who yet, nine cases out of ten, never find anything but disappointment—those who are always, as they think, nearing the golden treasure, though it seems to recede, as they approach. I would like, I say, that that poor class of men should be exempted from taxation, if it were possible. But I did not think then that the people whom I represented were disposed to rest on the small amount of surface property we had, relying upon that alone to carry on our State Government, and I do not believe it, to-day. I believe that if the vote were to be taken to-day, by the owners of mines in Storey County, they would say: "Deal justly by every man, and do not exempt any one. Do not pursue a course which will have a tendency to drive away the surface property which exists in our cities." Do not let us drive that property away by attempting to carry on the Government at the expense of only those smaller interests of the Territory. I have more faith than that in the honor, in the dignity, in the integrity, and in the sense of justice of the miners whom I represent.

It has been said here by some gentlemen, that they are willing to tax the proceeds of the mines. Now, if we were to tax only the proceeds, how unjust that would be! Here is a man, for instance, who is paying out perhaps five dollars for every dollar extracted from his mine—and gentlemen well know there are plenty of our mines, every dollar taken from which costs not less than two dollars, or two dollars and a half—would not such a provision operate very injuriously upon mines of that kind? And why should we tax only the proceeds of the mines, while we tax the surface property, also? Here is my friend from Washoe, (Mr. Bartlevant,) with his farm. The assessor comes along and asks the value of that farm, and he gives it and urges no excuse that it is United States property, although it is no less the property of the United States than the mines are, in Storey, Esmeralda, Humboldt, or any other county in the Territory. The farm is assessed upon its value. Then the assessor asks him the value of his personal property—of his hay in the barn—of his oats and barley in the ricks—his cattle in the fields—his horses and mules, and sheep upon the plains—and all those are assessed, also, and my friend comes up and pays his taxes upon them. Now, I ask those members who profess to represent the mining interest, if they believe that that is just?

I represent the interest of my constituents, not only those above ground, but of those beneath the ground, also; and let the consequences be what they may, I will not consent to do that which I regard as injustice to any class of men. I think if the mines are taxed, justly and properly—and it is not for me to say, perhaps, what is just or what is proper in that respect—and they are exempted from the taxation of the proceeds, the miners ought to regard themselves as exceedingly fortunate. For the proceeds of some mines would be, perhaps, more than equal to the value of the mine itself.

Then, again: this tax is not going to operate so very severely upon the mines, after all. Last year, the Gould & Curry Company gave

in as the amount of its surface property, eleven hundred thousand dollars, which was the amount upon which they were assessed upon the list by the County Assessor, and upon which amount they paid one dollar and seventy cents on each one hundred dollars. And a large amount of that property was situated within the corporate limits of the city of Virginia, and upon that was paid an additional tax of one per cent. Now, as I estimate it, last year, when Gould & Curry was worth eighteen hundred dollars a foot, if all the mines in the Territory had been taxed, as such, according to their value, the amount of taxable property would have been trebled and perhaps quadrupled, and the Gould & Curry mine would not have paid into the county treasury, for the benefit of the county, and into the Territorial treasury, for the benefit of the Territory, as large an amount of taxes as it did pay, under the operation of the law taxing surface property. When you come to assess the property of the mines at so much per foot, the Gould & Curry, having so much property in superficial structures, and surface property, would not pay an amount of taxes equal to what it paid under the old system. Now, to illustrate, take the case of the man with a little cabin and a hole in the ground, who has been so much talked of—the man who is running a tunnel, with nothing ahead but his hopes. He has a cabin worth say one hundred dollars, and one hundred feet in an undeveloped claim, worth in the market, say three dollars per foot. Now, if the surface property possesses only one-fourth the value of the mines, it follows that if the surface property alone is to be taxed, the percentage of taxation must be four times greater than it would be were the mines included for taxation. Hence, to raise a given amount of revenue, the "poor miner" of our sympathetic friends, would pay one dollar on each one hundred dollars on his cabin, which would be one dollar; or twenty-five cents on each one hundred dollars, including his mining ground, which would be one dollar. It therefore resolves itself into this: that as we decrease the range of taxable property, we must necessarily in that proportion increase the rate of taxation upon that class of property remaining liable to assessment—in a word, to quadruple the burdens of government upon one class, in order to relieve another class altogether.

I would like, I say again, if it could possibly be done, in adjusting this matter so as to make it as just and equal all around as possible, to see some means devised, some well-matured plan adopted whereby those "poor miners," who are struggling to strike something of value—it may be with the chances of five to one against them, or it may be perhaps even with the chance of only one out of ten—I would like, I say, to see some plan devised by which that class of men could be relieved from taxation. But I do not see how it can be done, and I ask the gentleman from Storey County (Mr. DeLong,) and the gentleman from Esmeralda County (Mr. McClinton,) and the gentleman from Lander County (Mr. Warwick,) all of whom represent mixed interests, how it can be done with justice? And, sir, there is no man on this floor who has a right to say that he represents the mining interests exclusively. We are all mixed in that respect. I represent fifteen millions, according to the Assessor's list last year, of surface property, in Storey County; and therefore, I say, you cannot call that a purely mining community, when we have that amount of surface property, to sustain the interests of the county and of the Territory. I ask these gentlemen from the mining counties, therefore, who represent mixed interests, before they cast their votes, or give their voices against taxing the mines, to ascertain whether they are not, by that course, exacting from one class, unjustly, and giving it to another class, with equal injustice?

Again, there are now on the printed calendar of the District Court in Storey County, nearly four hundred cases, and more than one-half of those cases are exclusively mining cases, seventy-five of which, at the outside, will occupy three times as much of the time of the court as all the rest put together. Now, I ask those who profess to represent the mining interests—which is really a mixed interest, however, as I have shown—if it is right and just to tax the owners of the surface property to pay all the expenses of that litigation, when it is keeping their own cases out of court? There is a dark shadow hanging over our county, and I think also over many other counties, on account of the difficulties in the way of litigation. Cases cannot be reached on the dockets of our courts, probably, for a long time to come. There are, in our county, clouds upon the titles of our surface property, and also upon our mines, which, on account of the difficulties in the way of litigation, cannot be cleared up. Sir, I verily believe that if, by the fiat of the Almighty, those cases could be reached to-day, and cleared from the dockets of our courts—if those clouds could be cleared up from the property, both the mining and surface property of Storey County—that county would be worth five millions of dollars more than it is to-day.

I think we should be frank in this matter; I think we should be manly; I think we should never attempt, unless perhaps when we are dealing with treacherous rebels, to "whip the devil around the stump." Let us come square up to the work and meet the issue before us like men. This is one of the most important questions which can possibly agitate this Convention. We are about to launch from the stocks into the waters of experiment, a State Government; and there is a powerful opposition to that State Government. That opposition has already begun to organize, and to organize, too, before men really know whether the Constitution we are framing is to be a good one or a bad one, in any respect. The question is: how can this State Government be main-

tained? I verily believe that if an assessment were taken of all the surface property in this Territory to-day, according to the cash value of it, as suggested in the substitute proposed by the gentleman from Ormsby, (Mr. Johnson,) the assessment-rolls would not swell up to an aggregate amount exceeding seventeen millions of dollars. Now, I ask the people of this State, without any disposition to dodge any question, if it is possible, under the circumstances, for us to maintain and support a State Government on a basis for taxation of less than seventeen millions of dollars? If it cannot be done, then the Convention should look the question fairly in the face, and endeavor to ascertain how we can have a State Government under which we can hope to escape from bankruptcy and disgrace. If that can be done, then the water is clear ahead; there is a fair course, and no breakers on the lee. I ask the Convention to embrace all subjects of revenue, and see what is legitimately subject to taxation, and what is not—what is property, and what is not. Let it be settled here, and now, and not be left to the Legislature, to be a bone of contention in every Legislature that shall assemble hereafter. Do not leave it in such a way that it shall be an open question for all future time, in every successive election of representatives to the State Legislature. Do not leave it so that this question shall be at issue constantly, so that the one class of men who want to escape taxation, shall press into their service all who are in their power, suborning all the voters they can; and the other class, in favor of equal taxation, shall be driven to the same course; so that money will be spent and squandered, and bribery practiced, in consequence of the action of this Convention, for the purpose of carrying one side or the other of this issue. Why should we leave this question in doubt for all future time? I ask if that is wise statesmanship, and sound legislation? I ask if it is in accordance with our sense of justice and right between man and man? It looks to me rather like a cowardly effort to escape from our just proportion of the burdens of society.

Our forefathers, about the years 1774, 1775, and 1776, became terribly excited, and I think justly so, because on the part of the mother country there was a determination manifested to tax the colonies, without giving them the privilege of representation. Now, do you want to introduce here a system equally false, by providing that there shall be protection of law afforded to some, without support of law on their part? Do you mean to say that a hole in the ground has no value, and then say that if any person jumps it, you will allow the owner to appeal to the courts to protect that hole in the ground? "No legal protection," is my doctrine, "where there is no contribution to sustain legal authority." This is a question, it seems to me, which appeals to the reason and common sense of the Convention. For one, I would rather that my right hand were stricken from my side, than that I should knowingly be a party to the commission of an act of injustice towards any man, and especially towards that great class of the community whose labors tend to cheapen our produce. I say, if there is anything which should be exempted, it should be such interests as conspire to give us potatoes for a cent and a half instead of five or ten cents a pound, and wheat and oats and beans at less than one quarter, or at least, less than one half the prices they would command but for the existence of those interests. It is by virtue of future competition that our mines are to be worked hereafter at a cheap rate; and just in proportion as you cheapen production, just in that proportion will the mines rise in value.

Now, I had the honor to address the Convention the other day in favor of aiding the Pacific Railroad; and one of the strongest arguments I could urge in behalf of that great enterprise was, that it would bring into play hundreds and millions of tons of quartz that are now worthless, and worse than dead on the hands of the miners, because they are in the way—that it was going to open up new fields of productive mines to the mining class, and give employment to thousands and tens of thousands of laboring men. Now, do you say that it would be unjust to tax the mining interest to pay the interest on those railroad bonds? Would you exact it all from the farmers whose property, to a certain extent at least, is to be depreciated by the railroad? Would you exact it from the farmer and give it to the miner, whose interest is to be augmented by the railroad? Would that be right and just? Would it be acting as one man would have another man act towards him? I feel, while standing before this Convention, the same power pressing upon me to do justice to my fellow-men, that I do in my individual capacity, in the private walks of life, and I hope no power will ever drive me from that path which has been marked out for me to pursue.

I have occupied a great amount of time already on this question, and at present will say no more. I only desire that every member shall act as though he himself were the party in interest. The only way by which we can hope to secure an efficient State Government, is to unite as one body, having one common interest, and one common destiny, and let each one of us do everything he can to promote the common object, for the support of that State Government.

Mr. MASON. This question has been so extensively discussed that I have got about into the position of that Dutch Justice of rather dull comprehension, who thought he could decide the case after hearing one side, but after hearing the other side, found he could not decide it at all. There has been a doubt expressed as to whether we have a right to tax the mines at all, under the Enabling Act, and it has been urged that if the farms can be taxed as

property, then the mines can just as legally be taxed as property, under the Enabling Act. That act says that the property of the United States shall not be taxed, and therefore, by incorporating this Article X, as it is now printed into our Constitution, we should be adopting only a nullity and a dead letter, under our Enabling Act. I hope therefore that the amendment as introduced by the gentleman from Storey (Mr. Tozer) will prevail. I consider that it is long enough and broad enough to cover the whole ground, and I do not want the shafts and bolts of malice to be thrown at that class of people whom I represent especially and particularly. Now, my friends from the "cow-counties," as they are called, would not like to have those words expunged, and the words "including farms and farming property" inserted.

Mr. STURTEVANT. I should have no objection at all to using those words.

Mr. MASON. I say they would not like to have the words "mines and mining property" expunged and another clause substituted, to wit: "farms and farming property."

Mr. STURTEVANT. I should have no objection to specifying both—none whatever.

Mr. MASON. Then, of course, the gentleman will vote for the amendment of the gentleman from Storey (Mr. Tozer.) I am satisfied he will, and I am much obliged for the expression of his sentiments. Now, the way that section reads as he proposes to amend it, I think no man at all conversant with the subject will deny that it covers the whole ground. It says:—

SECTION 1. The Legislature shall provide by law for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such property only as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes.

Now, I consider that that covers the whole ground, and your Constitution will then go before the miners, and before the people of the Territory, without any odious distinction—without affording any opportunity for any class of persons to say that this Convention took particular pains to throw their bolts of wrath at them. We, the miners, have as good a right to be considered as the head and front of this Territory as the farmers themselves have. Look at the arguments they use, sir. Who developed the resources of the country? What were the farms of the Carson and Washoe valleys worth until the miners developed their claims and built up a State in five years; a thing unparalleled in the history of the world? Is there any taxable property in this State outside of the mines? Do the mines of Esmeralda produce no property outside of the mines themselves? Yes, sir. And is not that property a source of revenue? Why, sir, seven-eighths of our taxable property at the present time is in connection with the mines, and in the capital employed in their development. Sir, it is impossible for the most fervid imagination to conceive the vast amount of wealth existing in this Territory. Go into the counties of Nye and Lander and Humboldt. Why, sir, you find your Ophir and your other mines in Virginia, would be looked upon there as insignificant, in comparison with the vast amount of wealth existing in those regions of the Territory. Take it from Amador eastward—the coast is clear, I believe, though the gentleman from Amador (Mr. Warwick) is somewhere in the house—there is Austin, and Big Creek, and Ione, and Union District, and Lamartine District, and Kentucky, and San Antonio, and all those districts, which will vie, I believe, with Virginia in the course of the next five years.

I have said that I do not profess to be a prophet, but I have a perfect right to prophesy, nevertheless, and I say that in five years from now, when the disturbances which now agitate the public mind shall have ceased, when peace with her halcyon beams shall be restored to bless us, when we shall have become a part of the great Federal compact, when the currency of the United States shall be the capital employed in our midst, and shall be equally as valuable here as it is in the East, when we do not set up as a standard of value that which is only an article of speculation in the eastern portion of the United States, when we shall have a National currency as a basis, when we can speculate because we shall have the article among us to speculate upon—I say, when that time shall come, the history of the world has never produced, and can never produce, a parallel to the wealth which this Territory will be in possession of.

Now, sir, I maintain that those who develop the rich mines of this Territory, are entitled to equal consideration with the farmers, who become rich on the products raised from the soil and exchanged for the bullion of the miners. I know our interests are identical. I heartily concur with the gentleman from Storey (Mr. Collins) that we are not independent of each other, but must work together harmoniously, for the promotion of each others' good. We want your potatoes and cabbages, and you want our bullion; and although we frown a little at the prices we have to pay for your cabbages, yet you smile when you receive and pocket the compensation. But do not in your hearts hold wrath towards us. Be generous. Place us on an equality with yourselves; that is all we ask. Leave it to the Legislature to say how all property, both real and personal, shall be taxed equally. But you want to incorporate a clause here designed for the miners particularly. I tell you if you do that, they will look upon this instrument, when it shall be presented to them, as the illegitimate offspring of a corrupt political body, and a miscarriage at that. It will be one of those peculiar cases of miscarriage, too, that always produces death to the body suffering it.

Now, sir, I am anxious that Nevada shall be a State. I am anxious that she shall be one of

the stars in that grand Confederation of ours. I am satisfied that this Union will be reestablished, though the Carolinas should become a forest of creaking gibbets, though vultures should gorge themselves upon the hanging skeletons of traitors, and though smoke and cinders should cloud the skies of the once sunny South. I say it were even better that seven millions of tyrants should be ground under the chariot-wheels of conquering freedom, than that succeeding generations should be placed within the grasp of despotism. [Applause.] And we will be the golden star of that Confederacy. We have the gold—all we want of it. If we had the Pacific Railroad now—if this war should cease—with the capital of the eastern States, which is there in abundance, to develop our vast resources—why, sir, we would rise higher in the estimation of the world than it is possible for the most exalted imagination to conceive. Now, I hope and trust that the proposed expunging of those few words, in accordance with the amendment of my friend from Storey, (Mr. Tozer,) will prevail. It will settle the whole matter satisfactorily to the miners. They will see that they are not to be the exclusive objects of indignation and wrath, and I tell you we will pay just as big prices for your potatoes and cabbages as we can afford.

Mr. NOURSE. I wish to state a few reasons why I am not satisfied with the section as it would stand after striking out the words, "mines and mining property." It would then leave it to read that all property, real and personal, should be taxed. That is all right. But the point has been well made that, under a similar provision in the California Constitution, mines are not taxed in that State; that the California Legislature, through a series of years, has resolutely refused to tax them. The gentleman on my right from Storey (Mr. DeLong) has maintained, as a lawyer, that under that wording, the Legislature need not—and I presume he means they cannot—tax the mines. Now, it is of no consequence that the President of the Convention thinks otherwise—an opinion which the gentleman from Storey (Mr. Fitch) drew from him with so much art and with such an air of triumph. That is the very point, the very objection to the section as it will be left, that while the gentleman from Ormsby (Mr. Johnson) thinks that under it, the mines may be taxed, the gentleman from Storey (Mr. DeLong) thinks that under it, the mines may not be taxed.

Mr. JOHNSON. I think I have enunciated distinctly the proposition that under this Enabling Act, the Legislature would not have the power to tax the mines, as the property of the Federal Government, but that in the former Convention, before the Enabling Act was passed, I felt satisfied they had that power. Since the passage of the Enabling Act, however, containing inhibitory language, I do not think they could do it.

Mr. NOURSE. Then my point is stronger still, for gentlemen on both sides think that under such a provision, the mines cannot be taxed. Now, I start out with the proposition that if the mines cannot be taxed, we cannot run the State Government. The surface property alone, with any reasonably conceivable increase, cannot carry it on. Now, can there really be any diversity of interests between the mining counties and the so-called "cow counties?" What, in this connection, my constituents expect from me, I do not know, having been nominated without my knowledge or consent, and elected in my absence, (and they came very near defeating me,) but I consider that I am not here to advocate only their peculiar interests, without regard to the peculiar rights and interests of others; but I am here as a member of a Convention to form a Constitution for the whole State, and to do that which will be really just towards all, as the gentleman from Storey (Mr. Collins) has stated his position to be. Now, can it be right, simply because a particular interest is dominant—simply because it has the most wealth—that it should be exempted from taxation? Can it be right, because the mining interest of the Territory is that interest without which there would be nothing else, perhaps, in the Territory, that therefore that interest should be exempt from taxation? Upon the same ground, you might exempt the shipping interest in Maine, the commercial interest in Massachusetts, or the farming interest in the western States. We know that the farming interest builds up cities, just as the mining interest does—that it creates property, just as the commercial interest in Massachusetts creates property; and yet those interests do not come forward and ask for exemption. They recognize at once the doctrine that they, like all others, must bear their share of the burdens of the Government, simply because they receive their full share of the benefits of the Government.

Now, it cannot be that the "cow counties" are to be helped by any course that will injure the mines. It cannot be that any representative of the agricultural interests desires, for the benefit of his particular county, to strike a blow at the prosperity of the mines. No man can be so foolish as that, because that would be striking a blow at the market for his products, and thus it would recoil upon himself. It is not because the representatives of the agricultural interests desire to set up independently for themselves, that they want the mines taxed; but because they want even-handed justice. They want a course pursued by which it will be possible—for it will be hard enough, any how—to carry on a State Government, under the Constitution which we frame.

Now, if this clause should be amended, as proposed to be amended by the gentleman from Storey, (Mr. Tozer,) it would simply provide for taxing real and personal property. These mining claims would seem to be included in that phrase, "real and personal property," or to be

neither real nor personal property. But careful conveyancers have used the terms, "real, personal, and mixed," so as to include all kinds of property, and it is contended that mining claims are simply possessory rights. Now, by the amendment proposed by the gentleman from Ormsby, (Mr. Johnson,) this question is put at rest forever in our organic law, which would be left otherwise still open and undetermined, so that those possessory rights, which are as valuable as any other rights of property, shall be taxed. And why should not we have the right to tax a man who has the privilege of taking out ore? Why not tax that man as well as to tax a toll-road? The man who builds a toll-road to Lake Tahoe, for instance, would have no right to sell the land over which it passes. He does not own the property. Yet, who doubts the right of a State to tax that toll-road? What man says that toll-roads should be taxed only on their net proceeds? But why not? I can see no more reason for taxing the right in one case than in the other.

Now, sir, the argument against taxing the mines according to their cash value, has lost much force, even to the unreflecting portion of the community, since the last Constitution was framed. There was then a speculative movement in the country, which has now, thank God, gone down. It was an argument then put forward, that it would not do to tax the mines on their speculative value, because that would prevent their development. I think there is not much speculative value left in them now. I guess they have got to the bed-rock, and I think there is not much danger that those speculative mines will be taxed at a higher rate than they ought to be. But was that ever a good argument? Was it a good one last year? Does this Territory need more prospecting? Is that what it wants? Does it need that prospecting shall be encouraged by exemption from taxation? Is not what we want, rather, the development of the thousand and one mines already discovered? Is not that what is required, rather than encouraging the "poor miner" in seeking for new ledges, when we have not the hundredth part of the capital necessary to work the ledges which have been already discovered?

Now, as the matter stands at present, there is not even a diversity of opinion, for gentlemen on both sides believe that if these words "mines and mining property" are stricken out, the Legislature would have no power to tax the mines. How does it leave us then? It leaves us with only the surface property, upon which to carry on the State Government. Now, in addition to the argument of the gentleman from Ormsby, (Mr. Johnson,) founded on the Enabling Act—the argument which satisfies the gentleman from Storey, (Mr. DeLong,) that the mines cannot be taxed because they are the property of the Federal Government—we have the argument to be presented to the Legislature, and to the courts, that this Convention did not intend to tax the mines, even if it shall be decided by the Convention—and possibly it may not be so decided—to omit those words. There being a doubt in respect to the language, and reference being had to the reported Proceedings of the Convention, to see with what view the language employed was adopted, it is found that while the words "mines and mining property" were included in the original Constitution adopted by the former Convention and taken by us for our basis, in going over the work of that former Convention and framing it to suit ourselves, we have struck those words out, leaving it in every other respect the same as we found it. Is there not thereby a strong argument afforded, to show that this Convention intended not to tax the mines? So it seems to me. If, therefore, those words are not stricken out, or if the amendment of the gentleman from Ormsby (Mr. Johnson) is not adopted instead, we are surely adopting a Constitution with a provision, in effect, that the mines are not to be taxed. That conclusion seems to me to be inevitable.

Mr. STURTEVANT. There is one point which I would like to hear explained, and that is, the term "real property." Is real property a perfect title?

Mr. DELONG. It is immovable property. Anything which you cannot move around with you is real property; it is something which is really there.

Mr. NOURSE. I have already suggested my views upon that subject, but I will give them more fully. The mere possessory title to lands of the United States, considered as the right of possession, is not real property. Our courts recognize it as evidence from which to presume a grant, when the question of the ownership of the United States is not raised; but considered in its true light, as a mere right of possession, I think that every lawyer will agree with me that it is nothing more than a chattel real, and is not real property at all. The United States Enabling Act prohibits the taxing of the land, as land, or as the land of the United States—and, the United States having the fee in it, if that question is raised, in a tax suit, and it is shown that the land has been taxed as real property, and it is shown also that the fee is in the United States—I think all lawyers will agree with me that not only the mines, but also the farms which are in that condition, would be exempt from taxation. But when it is taxed as the right to possession of real property, recognized by our statutes and judicial decisions, then that right of possession to real property, of which the United States owns the fee, is taxable as much as any other description of property. Therefore it is, that I favor the amendment of the gentleman from Ormsby, (Mr. Johnson,) which provides not only for taxing real property, and personal property, but also the property which partakes of the nature of both, or "mixed," as it is sometimes termed, like chattels real—the possessory rights which

are so familiar to us all here—those rights to the possession of ledges, farms, and all that. It is provided by this amendment, that they may be taxed; whereas the amendment of the gentleman from Storey (Mr. Toner) makes no such provision. Now, it seems to me that leaving this clause without such a provision—without any provision for taxing this property, or these rights of possession—is going to deprive us of the right to tax, not merely our mines, but even our farms. It seems to me that it would exclude from taxation all but a small fraction of the lands in our State. There would perhaps be no land subject to taxation, except that for which a patent has been issued by the United States Government, so that taxes can be assessed upon it. Unless the amendment of the gentleman from Ormsby shall be adopted, it will leave us with scarcely anything in the world to tax, and that is without reference to the mines at all. We shall have no taxable farms, or anything else, there being here such a large class of property consisting merely of possessory rights. I do earnestly hope that the amendment will be adopted, so that all this property, of whatever description, shall be uniformly and equally taxed.

Mr. WARWICK. I hope, for one, Mr. Chairman, that the amendment offered by the gentleman from Ormsby (Mr. Johnson) will not carry. There is probably no question in the administration of government that has occupied the attention of statesmen so much as the very delicate question of taxation. That the government must be supported, is a self-apparent fact; and that means must be provided for its support, is also self-evident. But how to provide those means, as I said before, has been a question which has exercised the wisdom of the greatest statesmen, for all time past. In the productions of every country, it has been found absolutely necessary, in some cases, to discriminate—to encourage some by bounties and benefits, whilst others are most heavily taxed. It always has been the policy of the United States, that those things which are articles of necessity, or the production of which is extraordinarily hazardous or difficult, should be encouraged by extraordinary bounties; while other things, easy of production, are considered capable of bearing a heavy, and sometimes an onerous tax. The gentleman from Washoe (Mr. Nourse) alluded to the State of Massachusetts. Now, if he is cognizant of the affairs of that State, he is doubtless aware of the fact that large bounties are paid to encourage the fisheries there. Why? Because they produce a species of taxable property from the deep, a place where it could not otherwise be taxed, but when produced, it becomes a legitimate subject of taxation. That is the very point which we ought here especially to consider.

Now, the gentleman from Washoe rises, as others did before him, and speaks as if the mines were not taxed. Sir, they are taxed, from the first pick that strikes the ground, and the powder that opens the rocky seam, to the ore after its production, and the bar when it is run into silver, and the property that accumulates from that basis. There is not one article, from the moment you open the mine, up to the moment you produce the ore, and to the time when that ore is distributed to the four winds by its owners, but it is taxed, in some shape or other. The question that divides the Convention at present is, the policy of taxing those mines, and of taxing them too, if I may be allowed to use the expression, in their crude state. A company is formed, and, upon paper, their capital is stated to be one million of dollars; are they to be taxed on that amount? Now, sir, I represent a mining county, and I have its interests very closely at heart; the more so, perhaps, for the reason that if this proposition should carry, I should be one of the victims of the injustice of this mode of taxation; and I will briefly tell you why. With a very excellent prospect of success, in company with a number of other individuals, on the twentieth day of last December, I commenced running a tunnel in the town of Amador. I worked my mine night and day for six months—from the twentieth day of December to the twenty-third day of June—at an outlay of over twenty-two thousand dollars, from which I have never yet realized a return of one cent. The capital of the company is represented at several hundred thousand dollars. Now, there may come a time when that claim can afford to contribute to the support of the Government, and then it will be a legitimate subject of taxation. But what would be the result, if the project encouraged by some gentlemen on this floor were to carry? Why, sir, the result would be, that that company, disheartened by past ill success, instead of endeavoring to resuscitate, and to drive on their work, would feel themselves crushed to the earth; and then what becomes of your taxable property? Suppose you sell us out under the hammer of the sheriff, what do you gain by it? Why, sir, you get nothing but a barren rock. If you were to sell us out to-day, at sheriff's sale, that mine itself, with all its valuable improvements, costing twenty-two thousand dollars, expended in the labor of six months past—the whole thing together, I say, upon which has been expended over twenty thousand dollars, would not bring five hundred dollars.

Mr. NOURSE. Will the gentleman allow me to ask him a question? I know of two quartz mills in Washoe County, which are nearly done, but are not yet ready to earn a dollar; yet they are taxed at just about their cost. Now, is it any harder for these men whom the gentleman speaks of, to be taxed on their mine at its cash value, prior to reaching the rich rock, than it is for the owner of those quartz mills to be taxed on them prior to their earning anything?

Mr. WARWICK. Certainly it is, and I will tell you why.

Mr. NOURSE. I would like to have you tell me.

Mr. WARWICK. There are none so blind as those who will not see. Now, I will tell you why it would be injustice to tax a mine which is yet undeveloped, although you can at the same time tax a mill which is nearly finished, with the greatest propriety. We will suppose that this mill could be completed so as to get to work in thirty days. Undoubtedly a millman would not start without knowing that he can get a sufficient amount of ore to crush, for milling is conducted now on the same kind of business calculations as the transactions of merchants, and though they are not always successful, yet when they are well conducted, they are generally successful.

Mr. NOURSE [interrupting.] Are not many mills out of employment now? Are they not thrown out of employment for want of ore?

Mr. WARWICK. I do not know. As to first-class mills—I can only speak for Lander County in that respect—there is not one mill within the precincts of that county of a character fit to extract the silver from the ore but can have work, night and day, crushing ore worth from seventy-five to one hundred dollars a ton. No, sir! and if there were ten times as many mills as there are in that county, there would not be one of them remaining quiet, night or day, for want of ore to crush; and the miners would willingly pay them remunerative prices for crushing, for we have mines which I believe, before God, will pay richly for hundreds of years to come.

Now if, after those mines begin to pay, they would escape taxation, then the people of the agricultural counties might justly find fault with the language of the article which we propose to incorporate in the Constitution of the coming State. But it is not a fact that they escape now; in no wise do they escape. Every article they use is taxed, and every article they produce is taxed. It is only a question of policy now—whether you will allow them to develop themselves, or crush them out before the chance for their development comes. Take the seed which produces the giant pine that grows in the State of California—that wonder of the world, which attracts visitors from every part of the earth, and has elicited exclamations of astonishment from men of almost every nation and clime. That seed in itself is insignificant. You plant it in the earth, and the smallest bird of the air could consume it, or bear it away. But you let it grow; let the rains of heaven fall upon it—let the sun give it its warmth, and the earth yield its nourishment. It grows—it springs upward—it towers, year after year—and it becomes at last a mighty, giant tree, covering with its branches an area so wide that you could scarcely credit the fact when you see the little seed which is at first planted in the ground. Now, this is what these gentlemen propose to do: They propose to take the seed which produces the giant tree, and destroy it the moment it is planted in the earth. I ask if that is sound policy?

These agricultural gentlemen, I suppose, have a perfect horror of crows. [Merriment.] They sow their fields with wheat, and let us suppose that just after they are sown, a flock of those pirates of the air carry off the seed which has been planted—where then would be their hopes of a future crop? What do these gentlemen do? Why, they take a collection of old coats, discarded pants, and dilapidated vests, stuff them into a semblance of men, and place them around their fields, to guard them and keep away these feathered piratical thieves, because they do not want their hopes destroyed in the bud—carried off in the germ. They want them to sprout, and to grow, so that, the spring-time having passed, the harvest may come, and they may reap the fruits of their industry. That is all we propose. We no more ask to escape taxation than they do. Every sensible man knows that so gigantic an interest as the mining interest of this State must be taxed, in order to support the Government, nor does any man, I venture to say, on this floor, endeavor, or desire to escape that taxation. It is just and right that we should be taxed, and we are taxed to-day, to the extent to which the mines pay. It is only a question of propriety and policy, to say when that taxation shall be—whether we shall develop the wealth hidden in the mountains around us or not. Let us go out, if we choose, into the desert, and suffer hardships, undergoing toil, and untold privations and sufferings, such as can hardly be described; and then, after we have succeeded in producing the precious metals—after we have developed the sources of wealth—we will come in and say to you: "From the barren hill, and the desert valley, we have produced gold and silver. Here it is. Tax it. It is at the disposition of the State and the National Government." That is all the difference between us.

Gentlemen must not seek to impress on the Convention the idea that the mining counties desire this amendment in order to escape from taxation. I have never heard it advanced in any mining county, or in any mining community. No member here has been possessed of so much hardihood as to say that his constituents sent him here to endeavor to escape from proper taxation. But what we do desire is to escape from a false basis of taxation. Now, suppose we were to go to Washoe and tax the prospect of the coming crop of the farmer, for that is what this amendment proposes in relation to the mines?

Mr. JOHNSON. I do not like to interrupt the gentleman, but the language of the substitute is, that *all* property shall be taxed according to its cash value in money. The laws will provide for the election of assessors, but no law could be framed under such a provision, which would be inimical to the just principle that everything shall be taxed according to its true cash value in money. Such is the basis

I propose, and it applies to farms, and to everything else.

Mr. WARWICK. One word further and I have done. I will first bring to the view of the Convention a leading principle which, I think, is pertinent to this case. Now there is a claim in Virginia, known as the Gould & Curry, and the area of that claim is probably not so large, including the mill site and the ground which the company claims as its mining ground, as that little patch in front of this building, known as the Park, or Plaza. That claim has, by the industry of those connected with it—by the intelligence with which it has been worked, and by the scientific appliances which have been placed at their command—been developed and increased in value to such an extent that it has paid taxes to the county of Storey, to the Territory of Nevada, and to the United States of America, upon over one million of dollars, and that is only one claim in the county of Storey.

Mr. FITCH. Do you mean that it has paid a million?

Mr. WARWICK. No, sir; I mean that it is valued at over one million of dollars, and taxed upon that amount. Am I correct?

Mr. FITCH. Yes, sir.

Mr. WARWICK. Very well; I never was wrong in my life, and I thought I was not going to begin now. [Laughter.] Now, sir, I believe the taxable property of Washoe County is about two millions of dollars. I think that is a correct statement.

Mr. BELDEN. Two and a half millions.

Mr. FOLSOM. It does not matter—it is worth more than that.

Mr. WARWICK. I accept the amendment to the amendment. That county is taxed on a basis of two and a half millions, and that county is about as old, and certainly as large, as the county of Storey.

Mr. STURTEVANT. Four times as large.

Mr. WARWICK. Four times as large, I am told; and yet it pays taxes only on two and a half millions of dollars, while one little patch in the county of Storey, properly developed, is taxed on—I believe, about a million and a quarter of dollars. Now, sir, that is the difference, that being one of the interests that requires encouragement, and which, being encouraged, in a short space of time yields a revenue, from a single small patch, amounting to over one-half of the entire revenue of the county of Washoe, although the entire county of Storey is only one-fourth the size of that county. This little patch in a county one-fourth the size of Washoe, yields about one-half as much revenue as the entire county of Washoe yields. I think this illustration will address itself to the intelligence of every gentleman in the Convention, as an argument to show that this mining interest is one which needs encouragement.

Mr. NOURSE. Allow me to suggest to the gentleman that the income of that mine is probably five times the amount of the income of the whole county of Washoe. The stock is divided up into shares, and its monthly dividends, though they have been sometimes as low as a hundred and twenty-five, or a hundred and fifty dollars a foot, have amounted during the past year, to somewhere about one million eight hundred thousand dollars. That is the income for a single year, which is equal in amount to about the whole of the appraised value of Washoe County. That is the interest which the gentleman thinks is so feeble that it must not be taxed, and needs to be fostered and encouraged by exemption from the burdens of Government.

Mr. WARWICK. Exactly. That is the very point I want to bring the gentleman to. By the encouragement which has been given to it, there has been developed a property which, according to the gentleman from Washoe, divides a dividend of eighteen hundred thousand dollars a year, and which is taxed in Storey County upon over a million of dollars, and nearly three millions of dollars are produced by it annually for taxation.

Mr. FITCH. Six millions of dollars—more than the whole product of Washoe.

Mr. DELONG. And all the balance of the proceeds are divided amongst the laborers, and they are taxed on four millions more.

The CHAIRMAN. It will be better if one gentleman at a time address the Convention.

Mr. WARWICK. I will add, that the very wealth produced by these mines has gone to build up Washoe County, without which, that county would not have been worth more than a hundred and fifty thousand dollars to-day. Look at the elegant palaces which have been reared between here and Washoe City. How did they come there? From the potatoes and turnips and barley raised in the Washoe valley? No, sir; but from the Gould & Curry, and the Gold Hill mines. I passed by them this morning, and I observed particularly the elegant residence of a gentleman with whom we are all acquainted. Did that come from the agriculture of Washoe County? No, sir; it came from the wealth of the county of Storey. Therefore, I say it is sound policy to encourage that interest which is producing such vast wealth, and not to seek to crush it in the germ. We should nourish and encourage it, and let it rear its head to heaven, so that eventually you, and I, and our children's children, may reap the benefits of the wise legislation which we are seeking to place in the fundamental law of our State.

Mr. MASON. Is it in order to tell an anecdote? It is in the way of feeble illustration of the present position of this affair. A young man in southern Illinois, who was in the habit of neglecting to wash his feet, had been out in stormy weather, and going into a neighbor's house, he placed his feet under the stove to warm them. The man of the house soon discovered an odor, and hastily started up to drive out the dog lying near by. But the young man

stopped him, saying: "Mister, you needn't interfere with that 'ere dorg, a mite; what you smell is my feet; but Lord, that's nothing; you orter smell 'em in the summer time." [Laughter.]

Mr. NOURSE. I think we can smell the "feet" of these gentlemen, and others, who have preceded them. I think "feet" is what is the matter here, and it is "feet" which we smell in this debate. "I thank thee, Jew, for teaching me that word."

Now, I wish briefly to pay my respects to the gentleman (Mr. Warwick) who spoke last but one—whose remarks preceded this dog story. I will not allow myself to characterize, as my feelings would lead me to do, the argument which he has advanced. He insisted on the necessity of refraining from the taxation of the mines—of refraining to call upon them for the payment of their share towards the support of the Government which is to defend and protect them—for the sake of encouraging an interest which has shown such innate strength that in the course of nearly three years' time, it has reached the towering magnitude of centuries of growth. When it takes only three years for the tree to spring up to such a height, from the little seed planted in the ground, does it need to be exempted from taxation for fear of its being nipped in the bud? Why, sir, there is not one miner in a hundred but spends more money, ten times over, every Saturday night, on wine and women, than his taxes for a year would come to. Gentlemen talk as if the taxation of the mines would crush the mining interest. Why, sir, it is only a drop in the bucket, and they never would feel it at all. It would be a cigar less, or a glass of wine less, every day, that is all. And it does not come from the feeble mines, which are undeveloped. Now that the speculating bubble has burst and broken, what is their value? They are to be taxed only at their cash value, and if they do not produce the precious metals they will not have much cash value. Who is going to consider a mere hole in the ground as worth five hundred dollars a foot, when Wide West is down to seven dollars, and Real Del Monte in proportion? It is not the weak and undeveloped mines that are going to feel the burden, for the cash value will not be there; but when a mine does come up to the enormous production of two million one hundred thousand dollars in a single year, then the tax comes in. Then it is a large sum, it is true, and yet, even then, it is a sum not to be felt. And I wish to say, Mr. Chairman, to you, and to the members of this Convention, that this amendment of the gentleman from Storey County, if not amended as proposed by the gentleman from Ormsby, not only exempts from taxation the "poor miner," who has been so much paraded here, but the whole mine of the Gould & Curry Company, and all the enormous wealth of all the other mines in the Territory. It will leave only their stock to be taxed to the owners, as personal property, wherever they may happen to be, whether in Sacramento, in San Francisco, in New York, in Boston, or in London. And, sir, these wealthy owners will not be compelled to pay one dollar towards the expenses of carrying on the Government of this State, where the mine lies, and from which they are allowed, as they have been hitherto, without fee or reward, to take up and carry away immense wealth.

Mr. DELONG. If the gentleman fears that the section would have any such effect as that which he has last suggested, we are willing to put in a provision that the proceeds of the mines shall be taxed here.

Mr. NOURSE. If you will also put in a provision that the proceeds of saw mills, and quartz mills, and grist mills, and farms, and everything else, shall be taxed in the same way, well and good. Let them all stand alike. But why should we name one species of property and not another? Why should we adopt one basis for one description of property, and another basis for another? Why not do as it is done in every other State? My information may be at fault, but I do not know now of a single instance where any other basis of taxation than that of value has been adopted in the Constitution of any State in the Union. I know that in excluding property from taxation, some distinction may be made; but when you come to the taxing of property, I do not know where any basis has ever been adopted other than that of the value of the property. What possible objection, then, is there to the amendment of the gentleman from Ormsby? It simply provides, in language which we, who want all property taxed equally, are satisfied with—that all property shall be taxed equally. If gentlemen have no objection to that doctrine, why do they object to the amendment?

Mr. DELONG. I desire to ask a question. How will the rule work in taxing a piece of land in which a man has a title in fee, when you imagine another case where a tract of land, perhaps immediately adjoining it, which would be of equal value if it had the fee, is possessed by a party who does not own the fee at all, the fee remaining in the General Government? There is the same amount of improvement as in the case of the tract owned by the individual. Now, would you assess that at the same valuation, the one having the title and the other not, and each being of the same size and of the same intrinsic value?

Mr. NOURSE. The answer is ready at the moment. If the possessory title will sell for as much in open market as the title in fee, you would tax it the same.

Mr. DELONG. Oh, that is dodging the question.

Mr. NOURSE. It is not dodging it at all. If the fee title is better, it will be worth the most, and of course, it will be taxed the most. But if one piece of property to which a man has not the fee, but a possessory title only, happens to be worth, with that title, more than another piece with a title in fee, you will not, simply

taxing the fee, as a general thing, is better than the possessory title, tax the less valuable property more than the property which is more valuable.

Mr. DeLONG. I have another question to ask. Where does the gentleman derive the right to tax the property of the United States Government within the limits of this State?

Mr. NOURSE. I do not derive it at all.

Mr. DeLONG. Very well. Then the mineral lands, being exempted from taxation, and the miner having no right upon those lands, except merely the right of a permitted trespass, where does the gentleman derive the right to tax the miner at all, on property which belongs to the General Government?

Mr. NOURSE. I do not derive any such right. The gentleman is alleging a principle which is unsound, and he knows it. I should be sorry to think that the gentleman did not regard as a valid title, a possessory title on which he has brought suit himself, many a time. It is a title recognized by that Supreme Court of California, to which the gentleman looks up with so much reverence, and whose decisions—and some, I am afraid, which were never made by that tribunal—the gentleman has so frequently quoted. That is the title which we recognize—a title recognized by the courts. And here let me say, that with all my prejudices against California decisions, I recognize in the treatment of that question by the Supreme Court of California, the highest wisdom, the greatest foresight, and the broadest range of thought. There is one feature, certainly, in those decisions—and it is that very feature—in which the Supreme Court of California has attained a proud eminence. That title which we recognize as a possessory title, is not claimed to be an ownership of the land, as against the United States, but it is a right to hold the land, tolerated by the United States authorities, with a full knowledge of what is done under that possession. It is a right, which has never been interfered with, to go on and take the precious metals from the bowels of the earth. That right is worth money, is it not? Is it possible that a foot in Gould & Curry is not worth the $1,625 at which it is now quoted? No matter if the dividend come down again to one hundred and twenty-five dollars. Are men paying something for nothing? Are they paying money for that which they cannot hold? I think the gentleman from Storey will not venture to go before the people, or before a court, and say that these possessory rights are not rights; and yet they are not that right which the United States Government claims. It is not the gold, it is not the ore, that is taxed; it is not the land that is taxed; but it is the right that those parties have acquired, by and under the laws of the land, to go on and take from that particular location, the precious metals. Now, there are gentlemen here who have some analogous rights. They have rights, as I before remarked, under the laws of the Legislature, to gather in the tolls on the toll-roads. And yet they do not own an inch of the land. Will the gentleman say that toll-roads cannot be taxed?

Mr. DeLONG. It is a franchise.

Mr. NOURSE. Exactly; and you tax that right, just as we propose to tax the right to the veins of the precious metals, which Congress allows us to do, leaving the United States all the right of ownership it ever had.

Mr. DeLONG. The difference is, that in one case it is a grant by the sovereign power, and in the other there is no grant at all. The man with the grant of a toll-road franchise, has it granted to him by the sovereign power of the State, and in the other case, the miner enters upon the property without any grant, and can only hold it till he is dispossessed by the power which owns it. The whole error of the gentleman is that which has been alluded to by the gentleman from Lander (Mr. Warwick.) He maintains that the mines are not taxed now, and I say that they are taxed in every way. Suppose the case of a merchant who sells goods to the miner—what does he charge? Why, a profit above the cost. But what is the cost? It is not merely what he gave for the goods, what he paid for the freight, the rent of his building, and his own profit alone; but he puts on also the taxes; and the miner pays a large profit over and above it all. So it is with the agriculturalist. He raises a barrel of cereals, and sells it in the market, and in fixing the price, he puts on whatever it cost him in every way, and among other items is his taxes. He charges that sum to the miner, and the value over and above all; so that he realizes his profit in that way. You take from the only class of people producing money, your taxes. You are taxed, but you get it back from the miners, and you will continue to do so. That has been, and will always be the case in every country where the miner is the sole producer of the currency, which is a metallic currency. The miners produce every dollar you have. But for the mines, all your stores would be removed, your farms would dry up, and be abandoned, and your wagons would stop in the streets, or be turned elsewhere. Every man you see engaged in any business, profession, or calling, looks directly to the miner. He expects his profession, or labor, or property invested, to return a yield, and that yield he derives from the miner, after he has produced it in the mines. Every one charges, in the disposal of his wares and goods, sufficient to cover his taxes, among other things. He makes the price large enough, so that the miner shall pay it back to him.

Mr. STURTEVANT. I wish to ask one question. The gentleman speaks of the wagons being stopped which are carrying the produce to the mines. Now, what would the miners do if the wagons were stopped, for their "grub?"

Mr. DeLONG. Go and pack it, as I have done, for six months at a time.

Mr. STURTEVANT. But in some cases they would be eight months on the trip, if they had to pack it.

Mr. DELONG. They would get it by the exercise of Yankee ingenuity. So long as the mines pay, they will find the means of living somehow.

Mr. NOURSE. Would it not be cheaper for them to pay a slight tax, instead of packing their provisions.

Mr. DELONG. That may be, and we are doing it now. We say, instead of packing our "grub," we will allow you to haul it to us, and we buy it from your wagons and pay the price you ask. And when you sell your provisions out of your wagons, what do you charge? First, what the rancher charge, and then the tolls on the roads, and then, over and above every expense and cost, including the tolls, the first cost, and the time, you charge a profit, and the consumer pays it. You know it is so, and every single dollar of taxes that any one of these merchants and farmers pays, he makes the miner pay back to him when he consumes his wares, or consumes the products of his farm. You know that; and I say further, that there is not a surplus dollar, which comes out of the mines, that you do not also tax. Suppose the Gould & Curry mine yielded, in the course of six months, six millions of dollars; how much of that amount has escaped taxation? The eighteen hundred thousand dollars divided among the share-holders has been taxed; that is admitted. Now, what becomes of the remaining four million two hundred thousand dollars which have been paid out to the teamster, paid out to the mill-wright, paid to the engineer, and paid to the miner? It goes out in payment of every class of industry, and those men who receive it, pay their taxes. In that way, there is not one dollar of the millions which have been dug from the bowels of the earth by the Gould & Curry Mining Company during the last twelve months, that has not been taxed. It is all taxed, immediately it sees the light. Now, on the top of that, you ask us to levy a tax of millions on the fictitious value of the mine itself.

Mr. NOURSE. Let me correct the gentleman. Not on its fictitious value, but on its cash value.

Mr. DELONG. On its cash value; but I say there is no means of determining it. I have my own ideas of the value of my mine, and perhaps nobody in the world will agree with me. I go and find a spot where I think there is a ledge, and commence to prospect for valuable minerals. Everybody may call me a fool for wasting my time and labor, but the assessor comes along and says: "I want to assess your mine; what is it worth?" I answer, "I do not know that it is worth anything." But he puts the screws on by saying, "I will give you so much," naming a trifling sum; and if I do not take it or say I think it is worth more, he says: "If you will not sell it, you must be assessed for that." Now, I say if you do that, you kill the goose that lays the golden egg. If you do that, you stop the development of the mines, and you prevent, perchance, the discovery of mines which would yield thousands of millions of dollars, but which will never be developed if this policy be pursued. The more mines are discovered, the greater will be our wealth and prosperity, and the more wealthy mines we have, the more numerous become those very consumers to whom the farmers look to purchase and consume the products of their ranches. I ask you to stay your hands from these mines. We are willing to pay on everything that is in sight, or that we know we have got. You may tax every dollar taken from the mines, and every building erected upon them; and when you have gone that far, we think you have gone far enough; and I hope the Convention will agree with us.

Mr. HAWLEY. I was about to rise to address the Convention—

SEVERAL MEMBERS. "Let us take a vote." "Question! question!"

Mr. HAWLEY. I wish to say a word only. I am pledged here to support a certain interest—

Mr. CROSMAN. As it is the time for recess, if the gentleman will yield, I will move that the Convention rise.

Mr. HAWLEY. I will give way.

Mr. CROSMAN. I move that the committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article X, entitled Taxation, had made some progress therein, and had directed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

Mr. BROSNAN gave notice that immediately after the recess there would be a meeting of the Committee on the Judiciary Department.

The hour of twelve o'clock having arrived, the Convention was declared at recess until two o'clock, P. M.

—

AFTERNOON SESSION.

The Convention met, and was called to order by the President at twenty minutes after two o'clock, P. M.

TAXATION.

Mr. KINKEAD. I offer the following resolution:—

Resolved, That Article X, and the various amendments proposed thereto, be referred to a special committee of five, with instructions to report a substitute therefor.

My idea in offering this resolution is, to have an opportunity to get together some statistics and facts in regard to the financial condition of the Territory, which I think are necessary for a proper understanding of the subject.

Mr. EARL moved to lay the resolution on the table.

Mr. DeLONG moved that the resolution be indefinitely postponed.

After some discussion, mainly in relation to questions of order, both motions were withdrawn.

The question was taken on the adoption of the resolution offered by Mr. Kinkead, and upon a division, it was not agreed to—ayes, 8; noes, not counted.

COMMITTEE OF THE WHOLE.

Mr. DUNNE. I move that the Convention go into Committee of the Whole, the President remaining in the chair, for the further consideration of Article X, entitled Taxation.

The question was taken and the motion was agreed to.

TAXATION.

The Convention accordingly resolved itself into Committee of the Whole, (the President remaining in the Chair,) and resumed the consideration of Article X, entitled Taxation.

The CHAIRMAN stated the question on the amendment offered by Mr. Tozer to strike out the words, "including mines and mining property," and also on the substitute proposed by Mr. Johnson, for the entire section.

Mr. EARL. I do not propose to detain the Committee by speaking at any length on this question, for it seems to me that it is a matter which is now fully understood by each and every member of the Convention, and we might as well come to a vote now as at any time, upon the different amendments before us. I think we might talk here for hours and it would not affect the matter much, if any. I am one of those who have the utmost confidence in the ability of the Legislature which is to succeed us. I think we can reach the gross proceeds of the mines so as to tax them, and we can certainly do that after the Act of Congress requiring the bars to be stamped, goes into effect; because, by an act of the Legislature, we can reach those bars in the same way, and tax them. Further than that, I hope that at some time we may have an assay office established here, and then we can tax the bullion passing through that assay office. I shall vote for the amendment of my colleague, (Mr. Tozer,) and think the whole matter can be very easily and properly disposed of in that manner.

Mr. HAWLEY. I am extremely loth to intrust my views on this question upon the Convention, but I think I should be entirely derelict in my duty if I did not give a full, free, and frank exposition, not only of my own views, which coincide with those of my constituents, but particularly of the views of the people to whom, directly, I owe my election as a delegate to this Convention.

The first proposition I lay down—and I shall endeavor to confine myself to three propositions—is that all species of property are equally subject to taxation, and that the failure of any body politic to make each and every species of property a subject of taxation has the effect to create privileged classes—a species of legislation which, whether taken negatively or affirmatively, is entirely at variance with the spirit of our institutions. The proposition itself, stated in plain terms, is one so self-evident, that it seems almost a work of supererogation to attempt to dilate upon it. Now, sir, it is contended, in direct terms, by some of the gentlemen on the other side of the question, that the mines are not properly subjects of taxation. I am as well aware as any gentleman in the Convention that such has been the general view of the question ever since the mines became so important a feature in the resources of our country, especially upon the Pacific slope. But I have listened attentively, and read carefully, the immense number of arguments which have been advanced to sustain that proposition, and nothing I have ever yet heard, or ever yet read, has tended to change my views on the subject, or to convince me that it is not the duty of the law-making power to compel that particular species of property to contribute to the support of the Government, as much as it is to compel the house, the ranch, the ox, the horse, the ass, or any other species of property, to contribute to the support of that Government, without which we might as well resolve ourselves at once into an aboriginal condition of anarchy, choosing, if you please, the tallest man among us to rule over us. Sir, I contend that the tendency of this sort of legislation, or the adoption of provisions like this in organic laws, is to create a privileged class. It is to give to a class of men all the rights and privileges of citizens, and at the same time to ask them to contribute nothing towards the support of that Government which secures us all in the enjoyment of life, liberty, and the pursuit of happiness. I shall content myself—for I do not wish to occupy much of the time of the Convention—with simply asserting that proposition, leaving any one who may come after me to refute it if he can.

Again, it has been alleged here most earnestly, that we cannot tax the mines, because they are property of the United States. I think the only argument made to-day on that side which is entitled to much consideration is that of the gentleman from Esmeralda, (Mr. Mason,) who advanced that proposition—that we are prohibited by the Enabling Act from taxing the property of the United States. Now, sir, when the terms or the meaning of any legislative act is obscure, or difficult to be understood, it is to be construed in the light of those established customs which possess the force and sanctity, so to speak, of enactments, the meaning of which

can be understood. Now, what has been the custom upon the Pacific coast, ever since the country came into the possession of the American people? I need only cite one decision of the Supreme Court of California, which was rendered some few months since, and in which the question of the right to tax possessory claims arose.

Mr. DeLONG (interrupting.) But that is not authority on your side of the question.

Mr. HAWLEY. I am not the gentleman from Washoe, sir. [Laughter.] The decision was, that the possessory right was a legitimate subject of taxation, and the court went on to say that in assessing it, it was necessary that the act of assessment should specify that it was the possessory right which had been taxed. Now, sir, under that decision, the principle is settled, in a manner which I think ought to be satisfactory to the gentlemen on the other side of the house. And the question arose there, because some individual, thinking himself wiser than others, who for a decade had paid their taxes, imagined that he could go on and possess the lands as the property of the United States—that he could hold them and receive from them all the benefits of occupancy and use as such—and at the same time pay nothing for the benefit and support of that system of Government by which we are all protected in our rights and privileges. Now, sir, such being the fact, I ask, with what degree of reason can gentlemen contend that there is such a distinctive difference between the possessory right to a mining claim, and the possessory right to agricultural lands? And more especially, how can they argue that the mineral lands are not taxable as possessory rights, when every man knows that a ranch, or a town lot in the foothills of California, which, under the laws of Congress prohibiting the sale of the mineral lands, is occupied in that manner, by possession only, is subject to taxation? The whole thing is disposed of by that decision of the Supreme Court of California, and it is idle to attempt to controvert it, until it shall be decided that that decision is not a correct interpretation of law, by some higher authority.

Why, then, need we falter in our duty, or hesitate as to our action, in regard to this subject? Every gentleman must know that if the proposition advanced by the gentlemen on the other side shall obtain in this Convention, if either directly or implied by, the Legislature, which is to regulate the mode and manner of collecting the revenue for the State of Nevada, are to be restricted from levying a tax upon the possessory claims, it will be a matter of utter impossibility to carry on the machinery of the State Government. And if gentlemen are so tenacious of their rights, they must know, as I know, and every man knows, that it is the shortest and easiest way to determine them, and to determine our status as a people, to allow this question to go untrammelled before the Legislature. Then the Legislature can enact a law taxing claims of all descriptions, and in that event, parties deeming themselves aggrieved, will resort to the highest tribunal for redress, and the question will there be definitely settled. If possessory rights are taxed, and if their owners think that that taxation is illegal, they will appeal to the courts, and there the matter will be determined. On the other hand, if they are not taxed, those property holders upon whom the heavy burden will rest, will contest at once the constitutionality of the law, and in that way they will arrive at a definite and clear decision of the question.

Mr. DeLONG. Cannot you do the same thing? Suppose you adopt this proposition of ours, and the Legislature should fail to tax the mines, the farmers might attack the revenue bill in the courts. They would say: "Here, the Constitution provides that all property shall be equally and uniformly taxed; and now, inasmuch as this revenue bill does not do it, it is unconstitutional and void."

Mr. NOURSE. But that would destroy the whole tax levy for that year.

Mr. DeLONG. So it would if you take the other way.

Mr. HAWLEY. The interrogatory of the gentleman has been well answered. Let those men who have grown rich and have not contributed towards the support of the Government, go into court, and do not throw upon the State which is about to be created, the burden of one year's support of the Government, without any income from taxation, when that burden would create a debt which would be likely to hamper the State for generations to come. Let the question be tested affirmatively, and not negatively.

Mr. DeLONG. You could test it just as well the other way.

Mr. HAWLEY. I admit that we could; but we, on this side of the House, prefer that you should be the party to bring the test.

Now, let us look at this matter a little further. Suppose this course of action is pursued, we know what will be the result. We know this, that if we adopt a State Government, and the Supreme Court decides that a portion of the revenue for the support of that Government is not to be derived from the taxation of possessory rights and claims, such as have been enumerated, it will be impossible for us to support that State Government, and we shall at once be obliged to lay down the attributes of sovereignty, and appear as miserable suppliants, asking to be supported as paupers at the hands of the General Government. Now, I put it to the mind of every gentleman here, whether it is not better to meet this issue boldly, and not to listen to the suggestions of men who are rolling in wealth, and occupying high positions in other lands. I submit whether our own pride of character, and our State pride, should not do away with those objections, even if other arguments failed. I most sincerely hope that the Convention will adopt the amendment offered

by our President, and then we shall have no half-way dealing. I hope the Convention will not consent to the proposition of the gentleman from Storey, (Mr. Toser,) to strike out the words, "mines and mining property," and so leave the whole matter open to endless debate and conflicts in the courts of law, which will have to be carried on, without any distinct, decisive proposition laid down in the Constitution upon which to base the judgment of the courts, either for or against any issue that may be raised. Let us, I repeat, meet the issue squarely. I do not fear to be found voting in the minority, when it is an honest minority. I have conversed, I may say, with hundreds of my constituents on this subject, and they all think and say that that class of property which has already raised so many, and which promises to raise so many more, to wealth, should be taxed, like all other property, for the support of the Government. I do not fear the issue before them, but I do fear the influence of that class of men whose interests are not with us, and who care nothing for the prosperity of this community, further than that prosperity may enable the community to keep from the doors of their tunnels, and from the precincts of their mills, the hand of the spoiler.

What, I ask, would be the consequences of an intervention of a foreign power in our National affairs? Gentlemen may say that that is only a scare-crow, or a bugbear; but where would be the objective point of an invading army, in such an event? Not the few houses and improvements scattered through the sage-brush in our State, but rather, they would strike at once at the centre of our wealth. And who would be called upon to defend it? The question answers itself, and I conceive it is unnecessary to go farther. Now, sir, it is necessary only to lay down my first proposition, that every species of property should be equally taxed, and then it follows in the second place, that the fallacy of the argument of the gentleman from Esmeralda, (Mr. Mason,) is entitled to no consideration, because custom, which is our unwritten law, destroys whatever of vitality that objection might have had, even supposing it to be well grounded. I ask the members of the Convention only to consult what I believe to be their best judgment, and I am confident that the result will be a broad, distinct, emphatic, unmistakable enunciation of the principle that every species of property held by the people of this Territory, or State, is a legitimate source of revenue, and ought to be required to contribute to the support of the system of Government under which we hope to live.

[Mr. McCLINTOCK in the Chair.]

Mr. CHAPIN. I presume, Mr. Chairman, that gentlemen of the Convention are already weary of this discussion, and ready to vote upon the question before it, but I beg their indulgence while I make a few, and only a few remarks, for I am as anxious as most of them, to come to a vote as soon as we have the subject sufficiently and properly ventilated.

There is one point on which I think we are all agreed, namely, that our prosperity depends materially upon the successful development of the mines in our Territory. The wealth of our towns, and the beautiful and comfortable houses that now surround us, are all the results of the development of the wealth of those mines. Without them, sir—if they were stricken out of existence, or if work were suspended for a single year in all those mines—we would revert back at once to the condition of the old days when you could find in our Territory nothing but here and there a way-station of the overland route. The beautiful edifices and comfortable houses in our towns and cities, would be deserted, and given over entirely to the occupancy of bats, donkeys, and goats. For what is there to induce men of enterprise to live here, except the wealth of our mines? Of what value would be all your farms in the valleys around here, without the population which is employed by those mining companies—without the miners engaged in opening the mines throughout the land? Of what value, I say, would all this property be without that population, to afford them a market, and to pay for their produce those enormous, and more than remunerative prices, which have heretofore been referred to in this discussion?

Now, we all agree on that proposition, and I think we will all agree on another proposition, namely, that it is our duty to foster, protect, and encourage this mining interest. How should we do that? Why, sir, my idea is that we should do it in the same manner that the State of Massachusetts encourages the whale fisheries—the associations and incorporations of companies, who send ships from New Bedford to sail in search of whales upon every sea. They encourage that branch of industry in every possible way. It is true, they may tax the outfit, as we tax the mills, and the machinery of the mills; but do they tax the oil, or the prospect of obtaining the oil, before it is brought into market? No, sir; they wait till it gets into New Bedford, and the result is, that there has been built up a magnificent city, with an amount of wealth which affords, in the way of taxation, hundreds of thousands of dollars to support the Government of the old Bay State.

Mr. NOURSE. How could they tax the whales, which are at large, in the ocean?

Mr. CHAPIN. They could do it with the same propriety that we might tax the undiscovered mines in the bowels of the mountains, which it may take a thousand years to find. I would rather take my chance in chasing up the whale. [Laughter.] They have something tangible and valuable, upon which to levy their tax, after the oil is brought in, and they derive a revenue from it. And all I ask in our own case is, that we shall be as wise as they are—that we shall keep our hands off and refrain from oppressing the miner, and all those asso-

citations which are investing their thousands and tens of thousands of dollars in the chances of developing new mines, until they shall find something of value which may be a legitimate subject of taxation.

Mr. NOURSE. I wish to make another inquiry.

Mr. CHAPIN. The gentleman can interrupt me as often as he pleases.

Mr. NOURSE. I wish to suggest that there are no amendments proposing to tax any mines which are outside of our limits, as the whales are outside of the limits of Massachusetts. It is only proposed to tax them within the limits of the State.

Mr. CHAPIN. We are talking about mines in our State; that is the question before the Convention, and we have nothing else under discussion now. But it is much easier to take a trip into the North Sea than a trip into our mountains, as my own personal experience has demonstrated during the last few years, in sinking a good many thousands of dollars trying to run a harpoon into a good lead. Now, sir, I believe in giving encouragement to the mines, and, as I said in the former Convention, I would sooner levy a tax upon the people and property of this State to offer a bounty for the prospecting, discovery, and development of our mines, than I would levy upon those mines an oppressive tax. By so doing, we would bring forth and develop wealth. We would get something which would be tangible—something which would bring in a revenue in the future, far greater than any benefit that we could hope to derive, if now, in our infancy, we go to cumbering the efforts of those who are already struggling under the weight of their burdens, and groping their way amid the clouds which surround them. Look at the effect produced simply by the talk there was six months ago, of levying a tax on our mines. That cloud began to arise then, and the whole community trembled. And beyond our own Territory—in New York, in Philadelphia, and elsewhere—where men had shown a disposition to deal in our mines, they began to stand aloof and to hasten into the market with their stocks, in view of the threatened taxation. And what has been the result, during the last six months? Why, sir, many of our best mining stocks have gone down five hundred per cent in that time.

Mr. JOHNSON. I wish to ask the gentleman a question. Does he attribute the depression of which he speaks to the fact that holders of stocks abroad forced them into the market?

Mr. CHAPIN. Somewhat; but not wholly.

Mr. JOHNSON. Has the gentleman any information as to how much of those stocks were held by persons living outside of San Francisco, and outside of this Territory; or how much were held in New York, or elsewhere abroad?

Mr. CHAPIN. I have not the data, but a large amount is held outside, and held, too, by parties whom we should be glad to interest more and more in our mines.

Mr. JOHNSON. Does the gentleman know a single person outside of California and this Territory, who has forced his stock upon the market?

Mr. CHAPIN. I have been so informed.

Mr. JOHNSON. Will the gentleman state the particulars, or specify a single instance?

Mr. CHAPIN. I have not the data, as I said before.

Mr. DeLONG. The stock circulars show it; they show that parties outside of California and this Territory have done it.

Mr. JOHNSON. I hope the gentleman will produce the authority. Where he can show that one man abroad has forced a single foot of stock on the market, I will show where ten feet have been thrown into the market in California and this Territory.

Mr. DeLONG. I will agree to that; I think I can furnish the data.

Mr. CHAPIN. I hope I may be allowed to proceed with my remarks. I say it is bad policy to depress the mines, for upon them we depend for our prosperity. That tax which Congress threatened to fasten upon us, although it was only a threat, has done its work, by depressing the value of the mines to a great extent; and now shall we add another depressing influence of the same kind, here at home—we, who should feel the importance of the encouragement and development of the mines more than all others? I say it is not good policy for us, as business men, to do it. I am free to say, Mr. Chairman, that I have much more property on the surface than I have in the mines; and that my particular interests would be promoted, perhaps as much as the interests of those who occupy ranches, by levying a tax on the mines. I stand in that respect in the same position as the owners of ranches. But I believe that if you allow anything to be placed in this instrument tending to depress our mines, they will go down to a fearful percentage below their true value. I had rather be assessed to keep them up; and I believe that the outside and surface property, as it is called, would become so much more valuable as to compensate for the whole of that assessment.

My colleague (Mr. Collins) has informed you that the surface property alone, in our county of Storey, amounts to about fifteen millions of dollars—that is, just the surface property alone. Now let me ask gentlemen where that amount of property has come from? Why is it there, upon that rugged mountain side and mountain top? how came it there? It is the result, entirely, of the development of a few mines. It is a parallel case with New Bedford, and the beautiful towns on Cape Cod, which have all been built up by the enterprise of those who delve in the depths of the sea, as we delve in the depths of the mountains. Is there not property enough to carry on our State without taxing the mines? Wait a few years longer, and we will give you fifteen millions more of surface property in Storey County, and you can tax

that; but I entreat you not to lay a greater burden upon the mines by taxation. If you will not do that, all our interests will go on prospering together.

Now, to come right down to the point—for I do not want to occupy much more time—I am in favor of the amendment proposed by my colleague (Mr. Tozer.) I am in favor of leaving it for the wisdom of the Legislature to prescribe and carry out the mode of taxation. In regard to the substitute offered by the gentleman from Ormsby, (Mr. Johnson,) I think, in a few words, that it is a little worse than the original section. I would prefer it as it stands here in the original, because the gentleman comes down on us with strong and substantial language, drawn just like the work of a lawyer, and says that all property, possessory rights, and claims, shall be taxed according to their true value in money. He fixes everything, and ties it down, so that there can be no escape whatever. [Laughter.] I would prefer to be allowed to vote for the old Section 1 of Article X.

Mr. COLLINS. I do not share in the feelings of my colleague (Mr. Chapin) in regard to the consumption of time on this subject, for I regard it as a question of too much importance to be passed over lightly. It is a question that challenges our deepest concern. It is on this very question that hinges the possibility of our maintaining a State Government. And, for one, I do not want, as I said this morning, to launch our Constitution and State Government upon the waters of experiment, unless there can be some evidence that we have in our midst the means adequate to maintain that government.

My friend and colleague, a gentleman whom I highly esteem, and who I believe is always governed by the highest convictions of duty and of right, takes a different view from myself on this question of taxing the mines. He lays down the proposition, that the mines need encouragement. Well, I admit that. Every interest needs encouragement. But the mines of this Territory have challenged the avarice and cupidity of the capital of the world, and you might as well attempt to knock the dong out of a bell, as to prevent these mines from being known and prospected. The world will come here; capital will come here; and though capitalists may be defeated in one operation, they will nevertheless make their investments in another. The mines must, and will be, prospected.

Now, my friend has, unfortunately, I think, alluded to the whale-fishery, and to other protective efforts of governments, for the development of particular interests. Why has Government offered bounties for the protection of those interests? Because they were trembling and feeble, not possessing sufficient vitality to bring forth the elements of success. And by means of the encouragement which the Government lent, they have acquired sufficient vitality to go forth and organize themselves for the carrying on of those enterprises, by which they have become vigorous institutions. Thus has the whale-fishery grown into an institution of great importance, and thus has the cod-fishery, also, grown up to be an important institution. And it is the same with all the other interests which are protected and encouraged in the same way, and which have in like manner grown up into importance. It was the far-seeing statesmanship of Henry Clay, and some other great men of that period, that brought our manufacturing interests up, so that broadcloths were reduced in price from ten and fourteen dollars, to two and three dollars per yard. It was this protection of the weak interests, which built up those interests.

But is this any reason why they should not bear their share of the burdens of Government? Go into the West, and see how such a rule would apply there. The farmers might say, "Look at the beautiful villages around us; they are all built up by the product of our farms; and now do you mean to tax us for the support of the Government, when we have built up so much other property?" But you would not for that reason exempt them and throw the whole burden upon the weaker institutions, which are struggling, perhaps, against foreign competition. Yet that would be just as rational and reasonable, I think, as the argument of my excellent friend and colleague from Storey County. Now, what is the weak interest of this Territory? Why, sir, during the last two or three years, as it seems to me, one of the weak interests of the Territory has been that of the mill-men. We have to-day more rock than we have mills to crush it. The mines are competent to get out more ore than the mills are competent to reduce: *ergo*, the mills should be exempted from taxation, and not the mines! That is one of our great interests, then, requiring protection, for we certainly do want more mills. I will be borne out in this by the gentleman from Lander, (Mr. Warwick,) and I think also by the gentleman from Humboldt (Mr. Banks.) The gentleman from Lander tells us, that if they had ten times as many mills in his county, there would be a sufficient amount of rock to keep them in operation night and day. Go to Virginia City, and look at the vast accumulations there of cheap rock, which, in consequence of the high price of mill privileges, the failure of the mills for the want of water, and the lack of cheap means of transportation, will not compensate the miners for crushing. Then if we refer to the high price of living for the miner, we shall find that another weak interest is that of the railroad, and that ought to be protected by a premium. Then there is the want of water. The man who will dive down deep into the earth, not in search of rich mines, or deposits of ores, but to bore for those Arcadian wells and springs which will give us mill-power, and the means of irrigation; the man who will furnish us the means of irrigating our lands, so

as to enable us to obtain the products of the earth seventy-five, eighty, or ninety per cent. cheaper than the present prices, should, most assuredly, receive a premium. These are the things which need protection; and just as soon as we turn our minds and thoughts in the direction of true statesmanship, and look at the public interests which require protection, instead of the interests of the mines, which are potent enough to take care of themselves, we shall arrive at an idea of great importance to our community.

Now, as to this idea which my particular and excellent friend entertains, that the fall of our stocks is the result of the threatened tax upon the mines, or upon the products of the mines—however unwise I regard it on the part of Congress to entertain the idea of that project for a moment, and I think it was injudicious in the highest degree—still I do not think it has had an influence in depressing the mines to the amount of one-fifth of one per cent. I do not believe it has had any practical influence upon them at all. But I apprehend there are other causes for that depression, of which this is not the time nor place to speak; but if I had the time, I think I could show you a hundred and one reasons, each one more potent in its operation in that regard, than those to which the gentleman alludes. Now I want gentlemen of this Convention to look at the policy of this thing—

Mr. CHAPIN. Will my colleague allow me to correct him in one statement.

Mr. COLLINS. Certainly; I hope to be corrected whenever I am in error.

Mr. CHAPIN. My remarks in reference to that point were not alone in relation to the depression occasioned by the apprehended action of the Government; but what I had in view also, was the fact that Congress looks upon our mining interests as something different from any other property, and was proposing to levy a peculiar and special tax upon that description of property, different from the tax levied upon farms, or upon anything else, and therefore people had taken the alarm.

Mr. COLLINS. This will bring me back, for a moment, to the consideration of our Enabling Act. Gentlemen learned in the law have given it as their opinion that we cannot tax the mines, because Congress, in framing the Enabling Act, has forbidden it. Now, who believes—what lawyer will venture his reputation as a legal man upon the assertion—that Congress, in employing the language used in that Enabling Act, had any reference whatever to this extensive class of property existing in our Territory? I think, if you attempt to tax the property of the United States at Fort Churchill, or any other segregated property belonging to the Government in this Territory, you would find that the Government would resist such taxation; but if I have in the city of Virginia, a lot of land, and the Federal Government wants it for purposes of its own, the Federal Government will send agents to negotiate with me, and will pay me its full value for it. And so of every other kind of property in this Territory, which has not been segregated by the Federal Government. The farms, and the mines, and every description of property held by possessory title, were not in the mind of the drafter of that Enabling Act, but simply the property claimed, held, and possessed by the Federal Government, for its immediate wants and uses. That has been the course of the Government, so far as I have been able to trace it, all along through its history of eighty-eight years.

Now, sir, I would like to have my distinguished friend and colleague, and all the other gentlemen, who have so eloquently opposed this amendment, give us some substantive, practical idea of a plan by which this State Government can certainly be supported, without taxing the mines. Anything that will relieve from taxation those smaller claims, which the laboring men of the Territory are at work upon, and in which they have invested their hopes, I will most heartily and joyfully support, if I can.

Mr. EARL. I wish to ask my colleague a question. It is whether or not, under the amendment of my other colleague, (Mr. Toner,) the Legislature have the right to tax the gross proceeds of the mines?

Mr. COLLINS. I am willing to accept the amendment of my friend and colleague, (Mr. Toner,) if he will allow one word to be inserted there. I will read it as it would then stand:—

SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real, possessory, and personal.

If he will accept that word "possessory," I will vote for it, for in that I see many advantages over the amendment proposed by the gentleman from Ormsby, (Mr. Johnson.)

Mr. JOHNSON. Right there we seem to make an issue, and if the gentleman will allow me, I will ask him what distinction he makes between the words "possessory claims," and "possessory rights?" For, I have used the word "possessory" in my amendment. Now, in what sense does the gentleman regard the distinction as existing?

Mr. COLLINS. I will give the gentleman very gladly, my views on that question, for I hope we may always be clear and distinct in the enunciation of our opinions, in order that the people may understand what we do. I have a desire always to present my views in a form which will be least offensive to the community, and to my associates. In conversing with a gentleman, I might express my thoughts in a very offensive manner; whereas, by clothing them in the language of a gentleman, they would not be offensive. Now, I will remind the gentleman that there is nothing upon which the mining interest is more sensitive than in regard to taxing the mines—not in regard to tax-

ing the wealthy mines, however, for I do not believe that their owners will make any great opposition to being taxed, because it is so manifest that they ought to contribute towards the support of the Government. But it is the weak, low grade of mines—the miners who have claims which they hold at from one dollar to five dollars a foot, and which, they hope, in time, may be equal in value perhaps to the Ophir itself—it is from this class that the opposition will come, if any shall be made. And if I could make the language strong enough without using the word "claim," I would not use that word, because with the miner, the word "claim" is associated with a mining claim, but is not associated at all with an agricultural claim. And on the stump, my friend from Humboldt, (Mr. Dunne,) whose mind is so clear, who is such a skilful advocate, that he can draw conclusions from very weak premises—would make a great handle of that word "claim." And if you take the case of a man who is less conscientious, and who, right or wrong, might be determined to defeat the Constitution, you give him, by using that word, the means of inflaming an audience of miners almost to desperation, so as to make them blind to everything that is good in your Constitution. For that reason, I would remove the word "claim," because it would not strengthen the language of the section, in the least. I think that those three words, "real," "personal," and "mixed," or "possessory," cover all the property there is in the Territory. This word "claim," in the amendment of the gentleman from Ormsby, is therefore useless, although if it could add any real strength to the section, I should be willing to vote for it.

Mr. JOHNSON. I will ask the gentleman, does he want to give the language of this section strength before the people, or in the Convention? I would like to know whether he desires to add strength to the constitutional provision, or merely to add strength to the argument before the people, who are to vote upon the Constitution?

Mr. COLLINS. Here is a provision, in the old Constitution, with which the public mind of the Territory has become perfectly familiar, and the only objection to it has been that it included the words, "mines and mining property." Now, I introduced that clause, in the committee of the Convention of last year, and it was the last thing I did before my illness. I introduced those words, "mines and mining property," and I did that, in order that we might go before the people with a fair understanding; not that the section gains any strength from that language, but to prevent any possible quibble or evasion. The public mind of the Territory, from one end to the other, has become perfectly familiar with that language, and it is well understood that the people would be satisfied with that section, with those words stricken out. But another objection has been raised here to-day, and to make that matter more clear, in consequence of the language of the Enabling Act, which says that we shall not tax the property of the United States, it has been deemed by gentlemen here for whom I have the most profound respect, that the insertion of the word "possessory," would be of value. I think so, also, and therefore I say, the only alteration I would make, after striking out the words, "including mines and mining property," would be to insert that word "possessory."

Mr. JOHNSON. Will the gentleman answer the question which I have asked him—whether he desires to impart strength to the provision in the Constitution by using words which will leave it without doubt that the mines are to be taxed, or to add strength to the argument before the people, when the Constitution goes before them? Does he wish to use the word "possessory," to add strength in the Constitution, or for the sake of the argument before the people?

Mr. COLLINS. I am decidedly in favor of adding strength to the Constitution.

Mr. JOHNSON. If that be so, and the word "claim" be used, I would ask the gentleman further, whether there is any difference in the application of that word "claim," whether it be applied to that which is worth a dollar a foot, or to that which is worth a thousand dollars a foot? If applicable to a mining claim at all, can there be any distinction between that which is worth a dollar, and that which is worth a thousand dollars a foot?

Mr. COLLINS. I conceive that this word "possessory," which I have introduced, makes the section as strong as the English language can make it.

Mr. JOHNSON. Will the gentleman answer my question, since he has given me permission to ask it? I will repeat the question, so that it cannot be misunderstood. It is, whether he conceives that there is any difference in the application of the word "claim" to a mining claim, whether it is one which is worth only a dollar, or ten dollars a foot, or one that is worth a thousand, or ten thousand dollars a foot?

Mr. COLLINS. I do not think the word "claim" gives the least value, directly—

Mr. JOHNSON. Is there any difference, my question is, in the application of that word, between a claim which is worth a dollar a foot, and one which is worth ten thousand dollars a foot?

Mr. COLLINS. I think not; either to a house-lot, a farm, or to anything else. The point with me, is this: This section is familiar to the public mind, from one end of the Territory to the other, as I before remarked. It has been canvassed thoroughly, and it has been accepted by ranch-men, by miners, and by everybody else, as all that can be required. It is believed that through it, with the words, "mines and mining property" stricken out, the mines and all mining property will be taxed; for it is not for the purpose of avoiding the taxation of the

mines, but simply because the words are surplusage, just as the gentleman's word "claim" is surplusage, that we wish to strike them out. The section is just as strong without those words. But the words "mines and mining property," have awakened a powerful opposition among the miners, and if we strike out those objectionable words, and put in the word "claim," that would still operate to excite them intensely. Therefore, I am in favor of using such language as shall answer all the purposes of the Government for taxation, but which shall not, at the same time, tend in its operation to stimulate and excite the minds of the mining community. I believe that is wise. I do not think, because I may have a difference in opinion with a friend, that I should place my language in the most offensive form, when I communicate with him. On the contrary, I think that if I have the correct idea—as a gentleman of caution, as a gentleman of discretion, as one who means to carry a point harmlessly—I should frame my language cautiously and courteously, but with perspicuity.

But again, I say, if any gentleman will introduce an amendment that shall relieve that small class of miners—the men who locate their own claims—the men, who, with pick and shovel, penetrate the bowels of the earth, horizontally, perpendicularly, or on an incline—those men whose only wealth is their hope—if we can relieve them from taxation, I say, I shall be glad to do it. But you know, as well as I do, that when a mine becomes worth five, ten, or twenty dollars a foot, foreign capital comes in, and gobbles it up. The scriptures tell us to love our neighbors as ourselves, but it does not tell us that we must love the non-resident better than we do the citizen, nor that foreign capital should be allowed to come in and draw cent-per-cent from our mines, and that we should relieve it altogether from taxation. That is neither just nor proper. But the poor miners, and not only them, but laboring men of all classes and descriptions, I would like to see exempted. If that cannot be done, if we must lay the axe at the root of the tree, and allow no exemption, even for charitable, or religious purposes, the poor miner, or the poor farmer, then I say let us take the whole Section 1, of Article X, and, with the amendment which I have suggested, adopt it.

Mr. JOHNSON. I do not know that anything I can say will have any influence upon the action of members, but as we pass along, I will say this, that no man in the Convention or out of it, shall ever have occasion to say that I have used a word of argument, or advocated any one proposition, that was calculated to cover over anything, or to secure any end by surreptitious means.

Mr. COLLINS. Does the gentleman mean to convey the idea that I have done so?

Mr. JOHNSON. No, sir; I did not say that; but when I get through, if I shall have said anything unparliamentary, I will subject myself to the censure of the gentleman from Storey.

I assume this proposition, that no man thus far has heard me speak upon any subject, but knows that I have been unmistakably in favor of whatever proposition I have attempted to advance, and when I have advocated the placing of any words in this instrument, it has only been to incorporate such words therein that the simplest in the land, upon reading them, might understand what they meant. I have not avoided the responsibility of incorporating words which might be offensive to a portion of the tax-payers of this State that is to be. But I have sedulously sought to do this, starting out with the broad proposition that all property—whether it be in the mines, or not—of little value or great value—or whether it be in houses, in goods, in stocks, or anything else—should, according to the value of that property, contribute its quota, ratably, to the support of the Government. And what I have intended, or have sought to place in this instrument, has been with the intention and purpose of carrying out that view, without assimilating or conforming my language to what people might think was or was not due to a sense of propriety. Now, sir, I have thought, and I do still think, that if it is the purpose and intention of members of this Convention to provide that all property and possessory claims, whether of such description of property of which the title in fee is in the individual, or of that property where the title is in the Government, but the individual has the possessory right, shall be taxed according to the value of that property or possessory right—its value in money, using the language of the amendment—that those who own or claim such property, shall contribute their proportion to the support of the Government, then the Convention should say so, in this Constitution, in unequivocal language.

Now, sir, I must say, in all candor and frankness, to my friend from Storey, (Mr. Collins,) that after all the various questions which I propounded to him, I was not able to deduce from his answers to those questions, the conclusion whether he was for or against the taxing of property and possessory rights, according to their value. If the word "claim" applies, and is obnoxious because it is peculiarly applicable to the small class of claims, or the holding of small priced claims—if that is the sense of the gentleman's objection—I cannot see, for the life of me, why the word is not equally obnoxious, and equally applicable, to those claims which are of a higher class. And if the striking out of that word will, in its operation, exempt those which are of the smaller class, those who have claims that are worth a dollar, or five dollars, or ten dollars a foot, I cannot see why it should not also exclude those which are worth a thousand, or ten thousand dollars a foot. If the word "claim" has any significance, I desire to retain it, and from the remarks of gentlemen it is apparent that it has some peculiar import,

else there would not be so much objection to it from the other gentlemen who are advocating the striking out of those words. If it were not objectionable to them they would consent to its use, notwithstanding that they might regard it only as surplusage—they would accept the word, for all that. But the fact is that it has a significance, as applicable to mining property beyond that which is apparent upon the surface.

Now, sir, we know, and all gentlemen who have lived in new States know, the peculiar applicability of the term "possessory rights." It is ordinarily applicable to the right of possession which the individual has to agricultural and grazing lands. The word "claim," however, is a word which, although in itself it imports not a great deal, yet in the experience of those who have lived for years in a mining community, it denotes a great deal. Every man here knows full well that it has a local signification and meaning—a meaning which cannot be misunderstood, because it has been so long employed and used in a peculiar sense. But my friend from Storey fears that when that word is used in the Constitution it will exert some tremendous power to prevent the miners from voting for the Constitution. Because why? Not, says he, because of any particular significance it has.

Mr. FITCH [interrupting.] Will the gentleman allow me to ask him a question? Would he be in favor of allowing the section to pass, with the words "mines and mining property" stricken out? or would he prefer to have it definitely stated that mines shall not be taxed?

Mr. JOHNSON. No, sir. I am in favor, now, henceforth, and forever, of the one broad proposition, that all property, and possessory rights, as well as other property—everything that can be converted into money—shall, upon the basis of its valuation, be made to contribute to the support of the Government; and for the reason which I gave the gentleman this morning, and the gentleman's memory cannot be wholly at fault as to that.

Mr. FITCH. The gentleman misapprehends my question.

Mr. JOHNSON. I will accept of any proposition which will tax every species of property that has a cash market value.

Mr. FITCH. What I wish to ask is this: both propositions being alike objectionable to the gentleman, would he rather have it left that the mines shall not be taxed, or would he prefer to have the section pass leaving out those words "mines and mining property?"

Mr. JOHNSON. No, sir; that is not my position, and it is a heresy to which I do not subscribe. I do not seek to avoid responsibility. On this question, I want every man in the Territory to understand fully my position. I do not wish—I will not say it in regard to anything which has been said here—I am not willing to say or do anything here which would have a fraudulent effect upon any portion of the voters, or the people of this Territory. I repeat, that I am in favor of exempting nothing which has a money value, from contributing its quota to the support of the Government. That is my position, and I have repeated it, time and again. I want to place in the Constitution, words which shall render certain and unmistakable what we mean. And if, on the other hand, gentlemen desire to make a distinction, by which the mines may be exempted from taxation, then I say—"Gentlemen, show your hands, boldly, and seek not to avoid the responsibility which you owe to those who sent you here, or to those who are to come hereafter. Place no words there, trusting to the chances of judicial or legislative interpretation. Let it be one way or the other; but come squarely up to the mark, and say what you mean." That is my position. And I say to those who agree with me, and, I am free to add, to some of those who only apparently agree with me, that everything which has a cash value, shall be made, so far as I am concerned, to contribute its quota to the support of the Government, so far as designating it here, in plain, unmistakable language may provide for it.

Mr. EARL. I would like to ask the gentleman a question. Does he propose to tax a prospecting mine?

Mr. JOHNSON. If it has a cash value, I do. If it has a value of ten dollars, one hundred dollars, or one thousand dollars a foot, if it has any cash value in the market, just to that extent do I propose to tax it. And I can see or imagine no reason why it should not be taxed. If it be a prospecting interest, which can be turned into money, to the extent perhaps of thousands of dollars, I see no valid reason why its owner should not be taxed, just as well as I, or another man, who owns a town lot, or a mill-site, or a team, which he can as readily turn into money. I can see and know of no reason why one should not contribute, as well as the other, to the support of the Government.

Mr. DELONG. In reply to one remark of the gentleman from Ormsby, I desire to say, that I consider we have shown our hands, and shown them pretty plainly. I have said that I am in favor of taxing the mines, and I think there has been no shirking.

Mr. JOHNSON. Well, I will say this, if the gentleman will excuse and pardon the imputation, that I think that they are devoid of frankness, when they tell us that they want to leave out those words, and submit the matter to the Legislature.

Mr. DELONG. The difference is in a legal point of view, however. The gentleman says the mines are property, and we say that they are not. We propose to leave it so that if he is right, the mines will be taxed, and if not, and if we are right, they will be exempted. That is what we want.

Mr. JOHNSON. The gentleman has an advantage of me now, in advocating that which I

conceive to be a most damnable heresy. He has the advantage in this: that since the Constitution which serves as our basis was framed, the Congress of the United States, in the exercise of its power and prerogative, has passed a law, in which it is said that the property of the Government cannot, and shall not, be taxed. Prior to that time, gentlemen who advocate that view, had not the benefit of this argument. Independently of the legal proposition, enunciated through the legitimate channels, I was prepared to go before the Legislature, or the courts of the land, and maintain, successfully, as I conceive, the proposition, that mining claims, or interests, are as much property, under the laws of the Territory, as any other designated species of property which can be named. Now, it is alleged that we are inhibited from taxing the property itself; but sir—and I have now to commend myself to the attention of a gentleman who spoke earlier in the day—I deny that it is not in the power of this Constitution to provide that the Legislature may, and shall, impose a tax upon the possessory right of any individual on the government lands, mining or agricultural. This, sir, I conceive to be a foregone conclusion. There are gentlemen who have lived in new States, and participated in the formation of State Governments—gentlemen whose birth-place has been upon the soil of Territories which have since grown into States, great in their proportions, in their population, in their wealth, and in political influence—and those gentlemen are quite familiar, whether they are lawyers or not, with the fact, that in those States, from time immemorial, they have provided for the taxation of possessory rights and improvements. And when the right was in fee simple, when a survey was made by the Federal Government, and a patent issued, then, and not till then, they have taxed the higher title which was thereby obtained.

Mr. DeLONG. If the gentleman will pardon the interruption—this clause appears in the Enabling Act, under which we are drafting this Constitution:—

"And that the lands belonging to citizens of the United States, residing within the said State, shall never be taxed higher than the land belonging to the residents thereof; and that no taxes shall be imposed by said State, on lands or property therein, belonging to, or which may hereafter be purchased by, the United States."

Now, if it is admitted that the lands belong to the United States, and are within the State, could the Legislature impose a tax upon them?

Mr. JOHNSON. That is the point, exactly. We cannot tax the lands, and the gentleman has offered an amendment in that respect. These gentlemen foresaw this, and they are not without shrewdness. They had read the Enabling Act before they came within this Convention, and they understand well the advantage to be gained by the adoption of the simple amendment offered by the gentleman from Storey (Mr. Toser.) They are not deficient in duly estimating that point, and I will frankly say that they have now exhibited their hand in full. I do not think they have a "full hand," but it approximates to it.

Mr. DeLONG. If it was not a "full" hand, we drew one. [Laughter.]

Mr. JOHNSON. But there are hands that beat a "full," as, no doubt, the gentleman has learned by experience. [Laughter.] These gentlemen were not so unsophisticated as not to know that by simply taking the amendment offered by the gentleman from Storey, (Mr. Toser,) there would be nothing in the State to tax but the houses on the mineral lands; and I do not know as even those would be subject to taxation. The gentleman from Storey understands the law on the subject of freeholds. I do not know that there are decisions of Minnesota which will bear it out, but certain decisions of California will—that where anything is annexed to the freehold, it becomes part of it. The freehold carries with it the improvements; and not only the mines, but the mills, and the hoisting apparatus, and everything connected with the mines, may be held to be so fixed to the soil that they cannot be taxed. And all those fine houses, and buildings, and palatial residences that line the hill-sides between Virginia City and Gold Hill, will escape, because they are fixed to the soil. I have no doubt that the gentleman from Storey (Mr. DeLong) would be found, with logic irresistible, advocating the proposition, that it is illegal to impose a tax even on the improvements. If an assessment were made on the value of the improvements of the Gould & Curry property, my friend would be found in the courts resisting, and I believe successfully resisting, the attempt to impose, even upon that property, a tax for the support of our Government. These gentlemen had foreseen this, and well nigh had we been caught in the trap. But, sir, there were others than myself on this floor, who had considered the consequences of the adoption of that amendment, leaving only personal and real property to be taxed—and if that had been done, there would have been very little of any kind of property subject to taxation.

I do not know how earnestly gentlemen are in favor of a State Constitution, or how desirable a State Government may be in the minds of the members of the Convention. So far as it has been developed on this floor as yet, there is but one gentleman opposed to the formation of a State Government, and that gentleman had the frankness, at an early hour in the session, to avow his position. I refer to the gentleman from Humboldt, (Mr. Dunne,) and I think I do him no injustice in stating that he is now opposed to it.

Mr. DUNNE. Not the slightest.

Mr. JOHNSON. The gentleman, then, is still opposed—for I take it that the converse of his proposition is correct—to a State Government. Now, I do not deny to the gentleman the right to that judgment, nor the right to the due ex-

sense of that judgment. He has the same privilege in that respect that others have. And that, nevertheless, he has performed his duties here faithfully and well, I fully believe, and I have no doubt he will continue to do so to the close of this Convention.

Mr. HOVEY. I wish to ask the gentleman from Ormsby a question. Under the statute of the United States exempting these public lands from sale for five years, does he propose that his amendment will cover those lands, so that they shall be subject to taxation?

Mr. JOHNSON. The gentleman is mistaken in assuming that the lands may not be sold by the General Government, at any time.

Mr. HOVEY. I think it is provided in the Enabling Act that they shall not be sold for five years.

Mr. JOHNSON. Before the Enabling Act arrived here, we were so informed, by a newspaper correspondent, but there is no such inhibitory feature in the Act. This is a little further west than some others of the new States, and they did not place such a provision in our Enabling Act.

Now, if we adopt the section as proposed to be amended by the gentleman from Storey, (Mr. Toner,) what have we left to be subjected to taxation for the support of the Government of a great and mighty State, which is to be represented in the councils of the Nation by two able and distinguished Senators, as I doubt not they will be, and in the lower House by one talented Representative? Possibly, too, the State of Nevada may be allowed to participate in the election of the President of the United States. And yet, to sustain all this grandeur, and glory, and political power, what is there left to the people of this State to be taxed? Why, sir, to support this immense power and dignity as a State, we shall have nothing but what little personal property there is scattered about the Territory and the little property owned in fee by individuals, and at the present time there is scarcely any of that latter description of property—none at all, I was going to say, for no patents are issued until the parties have proved up their preemption claims, and gentlemen who are familiar with the red-tape movements of the General Land Office, know that it is likely to be two or three years before they can obtain their muniments of title from the General Government. What is there left, then, to be taxed? Nothing but the personal property.

Now, is there any gentleman who has spoken on this question here, who has for a single moment entered into any estimate of the probable amount of taxes to be derived from such a source? What gentleman has presented any figures on this subject? Unfortunately, we are deprived of the presence of our distinguished friend from Storey, (Mr. Ball,) who is thought to be rather expert in that way, else there might have been some demonstration in the matter of figures, but I am inclined to think it would be upon our side that those figures would have been presented, rather than on the other, for I am sure there is no gentleman so skilled in that branch of science called mathematics that he would be able to present estimates showing that under such an arrangement as is contemplated by the proposition of the gentleman from Storey, (Mr. Toner,) we should not be entering upon an experiment which would be a formidable one for the people of this Territory; or in other words, that without the taxation of the mines the State organization would not be a burden too grevious to be borne. The value of the amount of property which would be subject to taxation under the amendment of the gentleman from Storey, would be so immaterial that it would be impossible to carry on the State Government upon such a basis.

Now, I want gentlemen of the Convention to bring their minds to this work, with calm thought and dispassionate consideration. What we are doing to-day, and shall be doing to-morrow—what we have been doing for the last ten days—all we have done in the past, and all we shall do in the future, is to be "love's labor lost," unless we provide by language which the people can understand, for a basis of revenue which will be ample, so that the people can appreciate their ability to support our State Government. Why idle away our time here? Why spend these valuable moments in useless and endless discussions, if that is to be the fate of the instrument so soon to pass from our hands? I, for one, must say that I do not flatter myself for a single moment, however earnestly I desire the adoption of a State Government, that the labors of the Convention will amount to anything if it is to go forth that we have stamped a lie on the face of this instrument; for it is to be presumed that this Convention, or any other Convention assembled to adopt a fundamental law for a State Government, will at least provide the means for its maintenance and existence; but when, on the contrary, we stamp on the instrument we are framing that which kills it at its birth—yes, even before its birth, so that, as the gentleman from Esmeralda, (Mr. Mason,) has stated, it will be an abortion—I say sir, that the people of this Territory, who have sent us here, will in no wise thank us for all our labors, and we would certainly have done better if on the first day we met, we had adjourned, in accordance with the resolutions introduced by the gentleman from Humboldt, (Mr. Dunne,) which received, I believe, not a single vote except his own. It would have been better for us to have gone home to our business, and to have announced to our constituents the melancholy fact that as a people, they are not yet able to support a State Government.

Mr. DELONG. Will the gentleman permit me to present some figures on this subject, since he has called for figures?

Mr. JOHNSON. If the gentleman will allow me to have them, I will read them myself. I am tolerably good at figures.

Mr. DeLONG. Let me say a few words, first, and I will then hand them over.

Mr. JOHNSON. How much time does the gentleman want?

Mr. DeLONG. Five minutes.

Mr. JOHNSON. Very well.

Mr. DeLONG. There has been a good deal of loud talk here to the effect that if this tax is not levied on the mines, the State Government cannot be maintained, and this Constitution will burst up, because the support of the State Government falls back entirely on these extraordinary cow county gentlemen. Now, how does it stand at present — without including the mines, but taking the property as it now stands? Here is a recapitulation: Storey County, which is supposed to be exclusively a mining county, pays taxes on over $14,000,000; Ormsby County, which through its representatives here, threatens a dissolution of the Government, or at least the defeat of the Constitution, if it cannot have its own way, pays taxes on only $1,983,655 26, or about one-seventh of the amount of the taxable property of Storey County; Washoe County, which is an agricultural county, is taxed upon $2,628,000; Douglas County, which has been on the rampage here, struggling for the taxation of the mines, pays on $772,000, not quite a million; Lyon County, which is a mining county mostly, is taxed upon $2,373,000; Humboldt County, exclusively a mining county, pays on $579,000; Esmeralda County, exclusively a mining county, or nearly so, is taxed upon upwards of a million; Lander County, exclusively a mining county, pays somewhere about the same. The total amount of taxable property is put down here at $25,589,423 57. And these three counties—Ormsby, Washoe, and Douglas—which are the only strictly agricultural counties, and whose representatives make such a terrific attack on the Convention in regard to taxing the mines, are paying taxes altogether according to these figures on just about five millions of dollars worth of property only, out of twenty-five millions of taxable property in the Territory at the present time. And yet they insist that they must have things just to suit them. They tell us we must yield to their demands, or have no State Government; in other words, that we must add to this twenty millions, on which we are already paying taxes, a direct tax upon our mines, although we are now paying nearly all the taxes. We are taxed upon property amounting to twenty millions of dollars, while they are paying taxes on only five millions, and yet they must have the mines added to our share of the burden. They must tax our mines, they insist, although we are now paying four times as much of the tax as they are.

Another thing: our taxable property is increasing all the time, and will continue to increase; while theirs would not be increased one cent, by the proposed change. That is what is the matter. These are the gentlemen who clamor for the taxation of the mines, and for equal taxation. These are the gentlemen who raise potatoes, and cabbages, and peas, and sell them at their own prices; and, not satisfied with taxing what we have, expect us also to pay taxes on what we hope to obtain hereafter.

Mr. JOHNSON. It is true the taxable property of Ormsby County was, last year, only about two millions of dollars, and the gentleman assumes that because Ormsby County was only taxed on that amount, there was no other property upon which her citizens were taxed. The gentleman is slightly mistaken in his assumption. I know of many citizens in Ormsby County who own property in Storey County, and they are probably as prompt tax-payers in Storey, as any in that county, or Ormsby County either. But I did not propose to raise any invidious distinction as between Ormsby County and Storey County. I have interests in that county, and have had, ever since my arrival in this Territory. My principal business for some considerable time was in that county. But I do not desire, in any discussion in which I may take a part here, to raise any of those invidious distinctions, or to say anything calculated to arouse local or sectional jealousies.

Mr. DeLONG. I disclaim any such intention on my part. I meant only to show the counties from which the money comes. Now, men usually pay their taxes where they live, and if a man living in Ormsby County pays his taxes in Ormsby County, he is not generally charged in Storey County. I had no intention, however, of making any invidious distinctions.

Mr. JOHNSON. Well, I will take that remark back. But this is not the question we are considering. The question is: what will you leave from which to raise money by taxation for the support of the Government? What will there be on which to base your taxation, if you adopt the amendment offered by the gentleman from Storey? (Mr. Tosse.) And the other gentleman from Storey (Mr. De Long) very adroitly avoided a reply to this question. Now, we have on this floor, another equally honorable gentleman from Storey County, who tells us that property in the county of Storey has been assessed this year about four times its cash value. This suggestion involves another gentleman from Storey, possibly—and I hope while I am speaking he will not rise to a question of privilege, and then, it may be, the other gentleman will not—of whom it has been stated here, and therefore it is not mere rumor, that he has been taxed at least three-fold more than he should have been. It is said that he was assessed for six thousand dollars, on a piece of property which he would have taken two thousand for then, and which he would be glad to take five hundred dollars for now.

Mr. FITCH. Yes, sir, if I could get it. But my other friend and colleague (Mr. Hovey) is in a worse condition.

Mr. JOHNSON. I have had him in my mind's eye, and it is understood between us

that he is not to rise to a question of privilege. [Merriment.] Now, that is the proposition before us. In regard to the assessment of property in Storey County, here we have an illustration—one lot assessed for six thousand dollars, which was only worth two thousand dollars, and for which the owner is willing to take five hundred dollars now. The presumption is, taking that as a basis, that to-day the assessable property of Storey County—and that, mark you, is including also the gross proceeds of the mines—would not amount to more than—

Mr. HOVEY. [interrupting.] No, sir; it would make nineteen million dollars and over, if you include the proceeds of the mines.

Mr. JOHNSON. Under what law, then, are the mines assessed?

Mr. HOVEY. We make the assessment under the same law.

Mr. JOHNSON. Are not the gross proceeds, then, included in this grand total, or aggregate?

Mr. HOVEY. No, sir.

Mr. KINKEAD. Because there never has been anything collected on them.

Mr. JOHNSON. Well, then; that renders Storey County a worse delinquent than I thought it was. But that is neither here nor there, in regard to the subject we have before us. This property I have referred to, was a town lot, and had nothing to do with the assessment of mines. Now, when the assessors are sufficient officers, and sworn to discharge their duties properly, the presumption is, that they have discharged their duty faithfully; and if a depreciation has occurred in this instance, the same rule might be made to apply throughout; so that if there were fourteen millions of taxable property in Storey County last year, by that ratio it would be only about two and a half millions at the present time.

Mr. HAWLEY. Five millions.

Mr. JOHNSON. Oh, yes; five millions. The figures came so rapidly, that I did not get the calculation exactly right. I will say here, that Ormsby County, in its assessment for this year, will not fall short of last year, and therefore, upon such a basis, Ormsby County will have more taxable property this year than Storey County. But whether this will be the case or not, I do not seriously undertake to say—and some of these remarks, of course, are to be taken rather in a jocose sense. But this I will say, and I challenge contradiction, that the property assessed in Storey County last year, upon an assumed cash basis of fourteen millions of dollars, leaving out the mining property, if assessed again to-day, would not exceed one-half that amount.

Mr. DELONG. A great deal more property has come in since that time.

Mr. JOHNSON. Yes, sir; and a great deal has been carried away since that time. But those assessments run eight months into last year, being made up to November. I will state this proposition—and I do not think Storey County has a defender here so ardent as to undertake to gainsay it—that this day, if the taxable property of Storey County, exclusive of mining property, were re-assessed, according to its market value, it would not amount to one half what it did last year. I do not believe that any gentleman here differs with me in this opinion.

Mr. CHAPIN. I beg to correct the gentleman. There certainly would be no such discount as that. I do not believe it, and my colleagues all around me say the same.

Mr. JOHNSON. I knew that my friend from Storey (Mr. Chapin) was not in the discount business, but I hardly expected that he would refuse to discount that statement. But this fact is assuredly indisputable, as gentlemen know full well, that last year there was murmuring and complaining, and the press in Storey County teemed with articles deprecatory of the assessments, and condemning the valuations which the assessors had made. Will the gentleman deny this? Now, sir, I have no doubt that upon the basis of last year, the property of that county, if re-assessed to-day, would not exceed in value one half the value of last year.

But, sir, we must not forget the main point—a proposition which no lawyer, at least, will gainsay, that under the operation of the amendment of the gentleman from Storey, (Mr. Tozer,) millions of this same property—in one instance alone, a hundred thousand dollars—would be exempt from the operation of the tax-laws, or the operation of any tax-laws which it would be within the power of the Legislature of the State of Nevada to enact. Millions would be exempted under that provision. I see that the gentleman from Storey, the author of the amendment, shakes his head. I do not propose to join issue with him on the legal proposition, and I do not suppose he proposes to deny it, but I will say that I am willing to place myself on the records of this Convention as expressing the belief that under the amendment which he proposes, there would be exempted from taxation, all that property of which I have spoken.

Then, how many millions of property would there be left in the State, subject to the operation of the tax-laws, to aid in the support of the State Government? Last year we were able to present facts and figures which demonstrated clearly that there would be eighty millions of dollars of property subject to the tax-laws; and yet we know that the Constitution was rejected by the people. One gentleman attributes its rejection to one cause, whilst another assigns a different reason for its defeat; but this fact I do know, that the only organized opposition that we had to encounter—we who were the advocates of the State Government—was found in the county of Storey. And what was the basis of that opposition? It was, that we were too poor to bear the expenses of a State Government. These gentlemen who oppose the taxing of the mines, know that fact.

There was an organized Executive Committee in that county, embracing many if not most of the leading citizens, one of whom has the honor now of occupying a seat on the floor of this Convention; and I recollect well the circular which was sent forth, containing the address emanating from that committee, and in which was embodied the one distinct proposition—and it was the chief ground of opposition alleged by them—that the people were too poor to bear the burdens of a State Government. If that were so then, with a taxable property of eighty millions, where will you find your one hundred millions, or your eighty millions, or your sixty, or your forty, or even your twenty millions of taxable property upon which to base the support of a State Government now? The question which we have to consider, narrows itself down to this point.

Now, sir, I do not propose to discuss the question of the price of cabbages, or potatoes, or the extraordinary influences which such matters—as the remarks of some gentlemen would lead us to infer—are to exercise on the minds of the people of this Territory; but I do propose to have this feature of our Constitution presented in such wise that the people cannot fail to understand that in the organic law which we frame, providing for a State organization, we have incorporated such provisions as will enable them to avoid excessive taxation, if as a community they shall decide to become a State. For, without equal taxation, upon mining, and every species of property, it will become a burden altogether too grievous to be borne. On the other hand, if that is not done, I propose to present to the people, in language that cannot be mistaken, the fact that we have incorporated in our Constitution provisions that shall not deceive them—that we have framed a Constitution which cannot in its terms mislead the public mind—although at the same time it declares that certain species of property alone, shall bear the burden of taxation. If we make an issue, I say, let us make it fairly.

Sir, I repeat that I want no government that is not self-sustaining. I want nothing in our Constitution but what is founded on the immutable principles of equity and justice. I care not what motive may be attributed to me, for my action in this matter. I know that the positions which I have taken here, are based upon those principles which are correct and just, and which will govern my every vote, during the sessions of this Convention. I shall act throughout as I have hitherto, upon the one broad principle that all property, possessory claims, or rights—everything convertible into money—shall contribute pro rata its support to our government. Unless we can devise a system of government founded upon this principle of equity, and justice, and right, I am prepared now to say, as I shall at a later period, I want no State Government.

I would prefer, rather, hereafter as heretofore, to stand in defence and support of that law now contained in our statutes. That is a subject, I know, upon which these gentlemen are somewhat tender-footed, because it is a statute which requires them to bear a part of the burdens of government; but we now have in the laws of the Territory, a provision that mining property shall be taxed. The Congress of the United States never prohibited it. Such has been its own policy, and such have been the expressions of those who have represented the people of this Territory, coming alike from the mining and from the agricultural counties. We can, by the grace of God, and vigilant assessors and collectors, enforce that statute, at least to some extent; and by its operation, we shall be enabled next year to make a better exhibit, through the report of the Territorial Treasurer, my colleague here, (Mr. Kinkead,) of the financial affairs of the Territory, than we can at the present time.

Gentlemen may talk about taxing gross proceeds, and not proceeds, but we have been told by the gentleman from Storey (Mr. Hover) that there is a discrepancy of some four millions of dollars between the assessments of Storey County as reported, and the same assessments as they were actually made, and that discrepancy, too, mark you, was in an assessment founded upon these gross proceeds. Now if you narrow this question down to a precise point, you will find that it is this—and I say it with all deference to the gentlemen who are so earnestly in favor of taxing the gross proceeds, because I hope they are more sincere—that the grand object, after all, is to avoid taxation upon the mines altogether. And I think my friend here from Storey (Mr. Chapin) will hardly assume otherwise.

Mr. CHAPIN. The gentleman must not assume too much. Wait till we have produced something. Wait till we come into port with a cargo, and then it may be taxed. I will not object to that.

Mr. JOHNSON. Then is the gentleman willing to tax the gross proceeds?

Mr. CHAPIN. Yes, sir.

Mr. JOHNSON. Well, I do not think my other friend from Storey, (Mr. DeLong,) will make so frank a concession. There is an obvious disagreement between the gentlemen.

Mr. DELONG. We have not the capacity of being united, as you have on the other side, because you all agree in wanting to tax us as much as you can.

Mr. JOHNSON. I suppose there are such antagonistic elements in your county that you find it impossible to unite upon anything. However, we have now a law which taxes the gross proceeds of the mines, and you cannot repeal it, unless you elect to the Legislature a majority from Storey County, and I do not think that can be done. This year, at all events, there is no earthly power which can prevent the taxation of mining property, if not according to its cash value, at least approximately so;

and thereby we may be enabled to pay off some portion of what I regard, considering the short period of the existence of the Territory, as an enormous debt, and a living scandal as well as an exhausting burden upon the people of the Territory. And then the immense wealth we have will be talked about, and promulgated through the columns of the newspapers, and sent broadcast over the land, to induce and stimulate, and invite immigration, under the operation of those laws, until at last we shall have a sufficiency of population and wealth to support a State. Until that time, we can afford to continue under a territorial form of government.

Unless we adopt the features embodied in the amendment I have submitted, and reject that of the gentleman from Storey, (Mr. Toner,) it is to my mind a foregone conclusion that we cannot support a State Government, and the people of this Territory never will be such, as I might justly say, arrant knaves and fools, as to attempt it. They will not undertake to set up a State Government at an enormous expense, far beyond their means, merely for the sake of the petty grandeur of having two representatives in the United States Senate, as well as a representative in the other branch of Congress, who can not only speak, but vote. No, sir; the people will not take upon themselves the gaudy trappings of a State under any such conditions.

Mr. BROSNAN. I have been very much edified with the interesting debate which this subject has evoked from this Convention, although I should have been better pleased if the discussion had not taken quite so wide a range. To my mind, the debate which has taken place, would have been very appropriate if we had been proposing at this time to enact a law fixing the class or character of property upon which the burdens of taxation should be imposed. But I do not conceive that we are here to discharge any such duty. I submit to the good sense of this Convention that our duty is, barely to define a rule, clear and positive, as to the aggregate of property, without making any specification of the class or classes of property which shall be taxed—that we are to establish a rule which shall be uniform, and which, within the limits and boundaries of the State, shall be universal. We are not here to designate whether or not cows, or oxen, or calves, or anything else, shall be assessed, or in what manner they shall be so assessed, but simply to lay down a general rule for the guidance of the law-making power.

The state of my health, and my disinclination to trespass long upon the Convention, will prevent me from expressing my views fully on the subjects which have been touched upon in the course of this debate, by gentlemen who have spoken before me. I do not propose even to take up the arguments which have been advanced by the several gentlemen. I should like to see a spirit of conciliation manifested in the Convention on this question. I deprecate certain sentiments which have been thrown out, indicative of an intention on the part of gentlemen, if they are not satisfied or pleased with the results of our deliberations, that they will, at a future time, take the position that they do not want, or that we do not want, any State Government. I look upon that spirit as one which ought to be buried in this Convention. It is very evident, because it is in the nature of men, that we must inevitably have some disagreement on a question like this, inasmuch as there is a conflict of interests between us; but I think, as sensible men, as reasonable men, as brethren, I might say, in all the political relations of life, at least, we ought to be willing to make concessions to one another. It is very clear that unless we do that, we never can arrive at any harmonious or satisfactory conclusion.

My own views need not be expressed on this subject, Mr. Chairman, for I had the honor of sitting in a Convention called for the same purpose as this, which was assembled here last year, and I then had no concealments as to my opinions. They are on record upon this question, and, sir, the oak, at the age of nearly fifty years, is a little too old to be transplanted. I entertain the same opinions to-day that I did then, and those opinions were, in effect, that in my judgment the mines should be subjected to the burdens of Government inasmuch as they required its protection, and upon the same scale, and under the same rule as attaches to the taxation of other property. That is my judgment to-day. But I have an idea of my own as to what a mine is. What is a mine? A man who is in search of a ledge, I take it, has no mine; when he has a mine, then, of course, it should be subject to taxation, and not before. But you cannot draw that fine line of distinction in this Constitution, and that part of the *modus operandi* of taxation you must necessarily leave to the Legislature, just as you leave the Legislature to levy the taxes upon any other description or character of property.

We all seem to agree, Mr. Chairman, upon this proposition, that the mines, at some period of their progress, should be taxed, as well as all other property, and there seems to be so little disagreement in reality between us, that if we should lay aside our prejudices, if we could lay aside the apprehensions which we have entertained in regard to those who are to succeed to us in shaping legislation in this State, as to whether or not they will be honest and capable men; if we would only consider that their interests will be identified with ours, though varied perhaps in some respects, I think there would be no difficulty in coming to a determination of this question. We should consider that gentlemen will come to the Legislature from what we call the "cow counties," as they will from the counties whose principal interest consists in mining; and when they get here they may be

as wise as we are, and they will certainly have a little more practical experience than we in the history of mining, and in the development of that interest. It seems to me it would be more sensible and reasonable on our part to leave something in their hands, in regard to a matter which is as complicated as this question seems to be.

Now, sir, one gentleman has said that if we strike out the words, "including mines and mining property," the Legislature would be estopped, so to speak, from the taxation of that species of property, no matter how rich a mine might be. With all due respect to the gentleman who has advanced that idea, I deny it, both as a proposition of law, and as a statement of fact; because a mine is property, as I hold, notwithstanding that in that opinion I may disagree with my learned friend and colleague, (Mr. DeLong,) who, if I understood him correctly, maintained the doctrine that a mine is not property. That it is property seems so plain and manifest to my mind that a gentleman of the intelligence of my colleague, by holding an opposite opinion, would be in danger of losing his standing as a reasonable and reflecting man. But he does not mean that a mine is not property; he means to say only that according to his idea of it, when a man is searching for a mine, and has money invested in that search, that investment is not property. I suppose that is the extent to which he would go. Neither do I agree with those gentlemen who say that property in land in this Territory belonging to the United States Government is not subject to taxation. I say it is subject to taxation, and is property, although the fee is in the Government. My friend and colleague said, I thought, very unhappily, that we were upon this land in the character of "permitted trespassers." There is a paradox which I think he cannot explain. A trespasser is not permitted, for if permitted he is not a trespasser. Sir, the settler under the laws of Congress, the settler under the bounty of the General Government, is not a trespasser.

Mr. DeLONG. I wish to ask the gentleman if he is aware of the repeated efforts which have been made use of by some gentlemen before the Supreme Court of California, to obtain a decision of that very question?

Mr. BROSNAN. With me, that is not good authority.

Mr. DeLONG. They contend that a man working the mines is protected there, occupying the position of a legalized trespasser.

Mr. BROSNAN. I shook the dust from my feet when I left California; and, with all due respect to my colleague, I say in regard to the court which once existed in that State, I have no respect for its decisions.

I was about to say, when I was interrupted by my friend, that we are not trespassers; that the title, call it what you will, is such as to secure the protection of the laws of the land. It is to the possessor, by the license of the government which he lives under, and respects, when he obtrudes upon no pre-occupant of the soil, a title as indisputable, as irrefragable as though it were sealed with the signet of royalty. Nay, more; in my estimation, it is of a stronger character than even the grant of an Emperor. He cannot be driven out until his Government driven him out; and I am happy to say that during the long period of the existence of our Government, it has not yet turned the cold hand upon the adventurer, and the Government will not do it now. So the man who settles upon and cultivates the soil, who builds his house, who creates for himself that home which my colleague so eloquently depicted when speaking upon another subject, setting up his penates, or household gods under the roof-tree, gathering around him the family circle; when he has done that, he is protected, and is willing, in order to be protected by the laws of the land, to pay for that protection which the laws award him. And his possession of that soil is property to him. My friend, I think, would have been likely to receive a rebuff if he had gone to Washoe County, and said to one of those gentlemen who own ranch claims there, that he had no property to be taxed. I think he would have been rebuked, for they all understand that it is property, and subject to taxation for the support of the Government. That question has been decided.

And here I may say that I do not exactly agree with my friend from Ormsby County (Mr. Johnson) in all the propositions which he has advanced, although on the subject of taxation it seems that I agree with him on the main question. But I can agree with many of the propositions which have been advanced here, during this discussion. The gentleman from Washoe, (Mr. Nourse,) and I think I might say my respected and worthy friend from Storey, (Mr. Collins,) have, in my judgment, shown that they entertain very correct ideas upon this subject. Yet I do not believe that it is necessary that the words "possessory rights" should be included, although to that extent, I am willing to go with the gentleman from Ormsby, (Mr. Johnson,) albeit, at the same time, I consider it a matter of supererogation, being entirely superfluous in the paragraph. Yet, to that extent, I say, I am willing to go with him, so that there may be no question upon that subject. We might employ the phrase "real, personal, and mixed," which has a legal definitive meaning, well understood throughout the world by all those who read, and have experience in respect to the laws of property. But inasmuch as my friend from Washoe, (Mr. Sturtevant,) it seems, does not understand what real property means, and might be puzzled by the word "mixed," I will not urge the use of that language.

Now, Mr. Chairman, I do not intend to trespass any further upon the time of the Convention. I wished merely to explain to the Convention my own position in the matter. I

should be content to vote on either of the propositions that are before the Convention, though I should prefer that the words "mines and mining property" should be stricken from the section, allowing it to remain otherwise as it is, for the reasons which have been given. That is, however, more a matter of taste than otherwise. I have some objection to one or two of the expressions contained in the paragraph or section which my friend from Ormsby (Mr. Johnson) offers as a substitute; but in any event, whatever shall prevail, I want the language employed to be such as can be distinctly understood. So far as I am concerned, I only desired to place myself on the record as being in favor of taxing the mines, when they are mines, and not before.

Mr. CROSMAN. This, Mr. Chairman, and gentlemen of the Committee, is, I think, one of the most important questions which has been, or will be, before the Convention. Very much time has already been spent in the discussion of this matter, but I feel that I should be doing injustice to myself, and to my constituency, if I should let it pass without expressing my opinion upon it—without giving a reason for the faith that is in me. In my opinion, if in the outset we had come here and taken hold of this article at once, and explained, and fixed it, in language so plain that it could not be misunderstood, and then gone home, we should have done our duty, at least in a great measure. And I firmly believe that if an angel from Heaven were to frame the rest of our Constitution, leaving this article only for us, and we should go on, and frame it in such a way that every laboring man could not understand it, or so that its language should be susceptible of two or more interpretations, the people would reject our Constitution. I conceive that this provision should be framed in such language, that the most common understanding, and the most illiterate man, may fully comprehend it; and to that end, we should put in only the plainest language.

Now, I am not in favor of either of the propositions which are pending before the Convention, in the shape of amendments. There has been much said of which I approve. I do believe, and I start out with that proposition, that all property should be subject to taxation equally. I believe that to be a principle founded in justice and equity, which no man can gainsay. But we are peculiarly situated in this Territory—more so than in any other country known in history. Our primary and principal interest is the mines, and it is for the advantage and interest of the people of this Territory to encourage the development of the mines, and to encourage the early work of prospecting, as we term it, before the mines are developed. For that reason, I am in favor of incorporating in this article of the Constitution something which possibly may appear like legislation, though, in my opinion, it is no more so than many things which we have already adopted. My wish is to provide and establish a limit as to the market value of the mines—a price below which they shall not be subject to assessment. By doing that, we shall fix the rule in such a shape, that the miner can understand it. I do not recognize the correctness of the doctrine that the mining claims ought not to be assessed. They should pay a share towards the expenses of the government. It is certainly through the mines that governmental expenses are incurred, to a very large extent, and therefore, when they become property, and are available to raise money upon, I do believe they should be recognized as property, and should be made to bear an equal share of taxation. And the proposition I would make, provided these amendments were voted down, and the question before the Convention should assume such a shape that I could do so in order, would be to the effect that no mining claim having a value below a certain figure, shall be taxed—that the Legislature shall not pass a law taxing mining claims having a market value below a certain amount per foot—and in the amendment which I have prepared, I have placed that limitation at a hundred dollars a foot. It will rarely happen hereafter, I think, that a claim will attain a value of one hundred dollars a foot, without a ledge having been found, and some proof in regard to the value of that ledge; and for that reason, I have fixed it as low as one hundred dollars, although, perhaps, six months ago, I might have preferred a higher figure.

So far as I am concerned, the interests of my constituents are based on mining. They are all mainly dependent upon them—either upon milling or upon prospecting the mines—and I know that this same mining clause, as it is called, when the old Constitution was submitted to the people, last January, was to them a strong objection. The question arose—What is a mine? and some gentlemen took the position that a hole in the ground was not a mine, while others maintained that it was. A great deal was said during that Convention in regard to what was a mine and what was not.

Mr. DeLONG. I wish to ask a question. How many mines in your part of the country would be subject to taxation under that amendment of yours?

Mr. CROSMAN. I am not aware of any mine there that would be. [Laughter.] If we had them, however, we should be willing to pay taxes upon them to support the Government. I was saying that the objection was raised in the canvass upon the Constitution, in regard to the definition of the word "mine," and I was about to say that my worthy friend from Storey, (Mr. DeLong), during that canvass urged in a speech which he made there just before that election, that a mine was——

Mr. NOURSE (interrupting.) I rise to a point of order. I would ask if a gentleman can be held responsible for what he may have said in a stump speech? [Merriment.]

The CHAIRMAN. So far as the gentleman

from Storey is concerned, the Chair thinks he can hardly be held responsible. [Laughter.]

Mr. CROSMAN. As I have said, the question was raised frequently during the canvas as to what was the meaning of the word "mine." Some held that a mine was only a claim which had struck a ledge, and others defined it as a hole in the ground, whence precious metals were taken. And upon that latter view, some of the miners took the position that inasmuch as they had holes in the ground from which they could take precious metals to a small amount, therefore, under that provision, they would be taxed.

Now, I do feel, Mr. Chairman and gentlemen, that it is important that we should clearly define our position on this question. Not only my own constituency, but the constituencies of several other members on this floor, who are representing undeveloped mines, in Humboldt, in Esmeralda, and in Lander Counties, are deeply interested in this matter. They have a great many undeveloped mines in those districts, which I hope are better than ours, but we also have some which are undeveloped; and I do urge the importance of making this distinction, or some like distinction, so that when this Constitution goes to the people, the language it contains will be such that they shall know what they are voting for—so that when they go to the ballot-box they will not feel that they are voting for a provision which is susceptible of an interpretation either one way or the other, and that interpretation may, after all, be against them, and the Legislature may tax their efforts in the way of developing the mines so heavily that all their labors to that end may be lost. I tell you if that shall be our action, the miners will hesitate long before they will vote for a Constitution containing such a provision. Now, I do believe we are anxious to frame a Constitution which will be acceptable to the people, and upon which we can maintain a State Government. The people of Storey County probably are not much interested in the class of mines which are still undeveloped, and they ought to be willing, if they have mines which are worth a hundred dollars a foot, to pay the tax which may be assessed upon such mines, for the purpose of maintaining our government.

And here is one fact worthy of our consideration, and that is, that if we neglect to provide for the taxation of mining property, we relieve from taxation altogether a great amount of property owned by non-residents, but which nevertheless is protected by the State Government, at very great expense. A very large proportion of the property in Storey County is held by parties outside of the limits of this Territory, and therefore is beyond the reach of taxation, for the purpose of maintaining our Government; and yet the litigation, the lawsuits growing out of that property, is costing hundreds of thousands of dollars annually. Hence, I say, it is important that that species of property should be subjected to taxation. But that class of men who are laborers in the mines, I think, should be, as they would be under the rule I propose to adopt, exempted from taxation. And the owners of these undeveloped mines would feel, whenever their mines should come within that rule, willing to pay the taxes imposed upon them, and hence they would be willing to endorse by their votes a provision of this kind, feeling that the object of it is the protection of the interests of those men who are delving in the mines. I do hope that neither of the propositions now before the Convention will be adopted, for the reason that I want to see the article further amended in the manner I have suggested.

Mr. McCLINTON. I wish to have my position fully understood upon this question, and in explaining it, I shall try not to occupy the time of the Convention to exceed three minutes, as I perceive that the hour for the recess is near at hand. I do not want this question to go before the people so mystified that the voters of the Territory cannot fully understand it. On the contrary, I desire to see it made so plain that the most illiterate man in the Territory may be able to know, when he goes to the polls, whether he is voting to tax the mines, or voting to exempt them from taxation. I am willing to assume the responsibility of what I may define as my position, for my constituents, I know, understand it already, and I desire that the people of the whole Territory shall know as well as they do what position I intend to take upon this question.

I do not believe, sir, that the bed-rock tunnel which is searching for minerals in the depths of one of our hills is a mine; nor do I believe it can possibly be considered as a possessory right to a mine, because, unless you can see into the hill itself, so as to ascertain that a mine is there, how can you decide that there is one there? I am not opposed to the policy of taxing mines and mining property, provided there is anything tangible to be taxed; anything that possesses real intrinsic value; but I claim that if a miner expends thousands of dollars in delving in our hills, or if he expends thousands of dollars in drifting upon a quartz ledge, that does not show that he has something of intrinsic value. He has got no mine; he is only prospecting for one; and until he finds it, I do not believe he has any taxable possessory right. I say he cannot justly be taxed for the privilege of hunting for a mine. When he finds it, however, it belongs to the General Government—that is, the real title is vested in the Government, not in the individual claimant, or discoverer of the mine. But he has a possessory title which the Government respects, and is as little likely to rob him of as it would be to rob me of one hundred and sixty acres of land after I had preempted it, and acquired my title from the Government.

I should like to see this section so modified as not to be ambiguous in any single sentence

or clause. I desire the people to understand plainly, when they vote on this Constitution, that they are, or that they are not, voting for the taxation of the mines. I admit that this printed instrument which serves as the basis of our action was rejected, in Esmeralda County at least, last fall, almost for the sole reason that it authorized the taxation of mines and mining property; but I believe, nevertheless, that the majority of the people in that county are not indisposed to tax the mines whenever they become able to bear the burden of taxation. But they want the language so plain and conspicuous in the article as to leave no doubt in their minds whether they are to be taxed only upon mines that are actually paying for working them, or to be taxed also for the mere privilege of seeking for a mine.

I believe that the mining counties generally will not object to being taxed upon the actual value of mines that have an intrinsic value, so distinct, and so easily arrived at, as to present no difficulty, and no question at all in the mind of the assessors, or of the law-makers. I believe in taxing such mines, I say, but I do not believe that a quartz ledge to which I may claim that I have a possessory title, for the purpose of trying to find a mine, can be legitimately considered as a mine. I am not entirely satisfied with the amendment offered by the gentleman from Storey, (Mr. Tozer,) but at the same time I am emphatically opposed to the amendment proposed by the gentleman from Ormsby, (Mr. Johnson,) and upon the principle of choosing the least of two evils, I shall vote for the amendment of the gentleman from Storey.

Mr. LOCKWOOD. I rise for information. The gentleman from Ormsby (Mr. Johnson) has said that there was but one individual in the Convention who was opposed to a State Government.

The CHAIRMAN. I said there was only one so far as had yet appeared by any expression of opinion in the Convention.

Mr. LOCKWOOD. Now, I desire that I may not appear inconsistent, in case I should see fit to oppose the Constitution when it comes before the people, and therefore I wish to state my position. I said when I was nominated—and the nomination was entirely unsolicited on my part—that I had always been opposed to a State Government, and had voted against the calling of the former Convention; that I did so because I did not think it necessary for us to become a State. And I said I did not think that any man holding that position really ought to come into this Convention, and I had no desire therefore to be elected as a Delegate to the Convention; but I said if I should be elected, I would do all I could, with what little ability I possessed, to create a good Constitution, and then if I thought that, under that Constitution, the prosperity of the people of the Territory would be enhanced by the adoption of a State form of government, perhaps I would favor it. With this explanation, I will leave that personal matter.

Now, I propose to occupy about three minutes in discussing the question before the Convention. It seems to me, Mr. Chairman, that there is a strange inconsistency in the action of some of the members of this Convention. They were so liberal in their views and feelings a few days ago, that they proposed to vote away three millions of dollars to the Pacific Railroad Company, when the great State of California, whose wealth, compared with that of this Territory, is as a mountain to a mole-hill, only proposes to pay the interest on a million and a half of the bonds of that company. I opposed that proposition for the very reason that I favor the amendment of my colleague, (Mr. Johnson,) now before the Convention. I saw a disposition, as I thought, to leave that matter in a state of uncertainty. As a distinguished gentleman from the South once said in the Congress of the United States, when the slavery question was under discussion there, that he desired to put it before the American people in such a form that nobody would be cheated, so I am decidedly in favor of the amendment of my colleague to this article, in order that nobody may be cheated. Then we say to the people that, having assembled here to frame a Constitution, we, in our wisdom, decide upon this proposition: that if they desire a State Government at all they must submit to the taxation of the mines. For I submit that gentlemen raked this Territory as with a fine-tooth comb, to find something to donate to the Pacific Railroad, and they could only find five hundred thousand acres of land which we are to receive hereafter as a gift from the General Government. They gave that away to the railroad company, and it was all they could find.

Now, these gentlemen submit to us, who represent the few cabbage patches there are in the Territory, this proposition: "We will go into a State organization, provided you will pay the expense." I consider that as the real proposition, divested of all the talk. Who is it that wants a greater number of judges? Why, the mining interest. Who is it that wants a remodeling of our form of government? It is the mining interest. And you magnanimously propose, as the gentleman from Esmeralda, (Mr. Mason,) said, in substance, if not in words: "If you will pay for the support of a State Government, we will buy your cabbages, provided you sell them lower than we can get them from California." That is a magnanimous proposition, truly! Now, I happen to know something in regard to the election in Esmeralda County, for I was there last winter, working with a party of twenty-six men in a mill. The weather was rather bad, and we did not go up to vote, but we took a vote among the mechanics who were there, and there was but one man among them who was not opposed to a State Government. Every individual except

one was in favor of taxing the mines. I may be taking an undue advantage of my friend from Esmeralda.

Mr. MASON. Oh, not all; it amounts to nothing.

Mr. LOCKWOOD. Now, I propose to inquire what it is that the miners want. In the first place, they say we want the railroad, and we want the agricultural counties to pay for it. Then we want more judges, provided you pay for them, also. No one has pretended, in this Convention, to argue that the railroad would enhance the value of agricultural property, but on the other hand, they have contended that we were opposed to the railroad provision, because of the supposition that a railroad could bring vegetables into our markets from California, a little cheaper than at present. Now, sir, the reason mainly why I am in favor of taxing the mines has not yet been stated in this debate. I am in favor of taxing the mines, because I want to make these gentlemen who are rolling in wealth in San Francisco, pay something for the support of our government, for the support of our common schools, and for the support of our courts.

The CHAIRMAN. The Chair will suggest to the gentleman that the Committee should rise now, as the time for the recess has arrived, and the gentleman will be entitled to the floor when we go into Committee again.

Mr. LOCKWOOD. Very well; I move that the Committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration Article X, entitled Taxation, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave to sit again was granted accordingly.

Mr. CHAPIN gave notice of a meeting of the Committee on State Seal.

Mr. DeLONG gave notice of a meeting of the Committee on Phraseology.

The hour of five o'clock having arrived, the President declared the Convention at recess until seven o'clock, P. M.

EVENING SESSION.

The Convention met at seven o'clock, P. M., and was called to order by the President.

Mr. GIBSON. I move that the Convention resolve itself into Committee of the Whole, the President remaining in the Chair, and resume the consideration of Article X, entitled Taxation.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE—TAXATION.

The Convention accordingly resolved itself into Committee of the Whole, (the President remaining in the Chair,) and resumed the consideration of Article X, entitled Taxation.

Mr. LOCKWOOD. I feel very little like attempting to obtrude further upon this Convention, but as the discussion of this question has taken a very wide range, I propose to give my opinions in full, although it may be an infliction upon the Convention.

When the time arrived for the recess this afternoon, I was about to speak of the injustice, or what I consider as the injustice, at least, of taxing none but the actual residents of this Territory, for that which benefits others as much as it does ourselves. Now, I do insist that it is not justice to exempt from taxation that which we are bound by our courts to protect. I have myself felt the burden of being summoned upon a jury, and thus called away from that labor which demanded my time and attention, for the purpose of spending weeks in this city, occupied in trying causes in which the residents of this Territory had no interest whatever. Sir, we are called upon to pay the salaries of judicial officers, whose time and attention is occupied in trying causes that interest the residents of San Francisco alone, and I insist that it is not justice to the residents of this Territory, for I admit that it is not a very desirable place for men to live, that they should be called upon to come here to open the roads, to build school-houses and churches, and to develop the resources of the land, for the benefit of other men, who have subjected themselves to no such privations, or hardships; while on the other hand, they are receiving immense interest upon the investments which they have made in this Territory.

It is a principle in political economy, that capital is sensitive, not to principles of patriotism, not to principles of State pride, but to the principles of loss and gain alone. Upon this very point I attempted to suggest my views to the Convention, when the railroad question was before us. I maintain that no railroad project was ever yet instituted and carried out for the purpose merely of benefiting any State, or for the purpose of advancing the interests of any people, living under a republican form of government. Capital, as I said before, is sensitive only to profit and loss, and I insist therefore that the argument which gentlemen have adduced, that we should foster the mines, in order to open up new claims, and so develop the country, has no bearing, because there never has and never will be a claim prospected in this Territory, merely for the purpose of developing the Territory, or of enhancing the properrily of the people. No, sir; men go to work in the mines for their own profit alone. Go with me to any State—to the State of California, if you please—and where do you find what gentlemen choose to term the pa-

dominating interest of the country? And I am free to admit that mining is not only the predominating interest, but the preponderating interest of this country—the interest to which all else must bow in adoration—the interest which towers immensely above every other interest in this Territory. It seems to me that it would be an act of folly for us to exempt that all-absorbing interest from taxation—that interest which demands all the attention of all the people in the community. It seems to me a preposterous position for gentlemen to assume here, when they get up and tell us that such an interest as that ought to be exempted from taxation; and I hold, as do many other gentlemen on this floor, that the mining interests would be exempted, under the operation of the section as proposed to be amended by the gentleman from Storey, (Mr. Tozer,) and I think I have very good reasons for saying so. I have spent ten years of my life in the State of California—a State which has in her Constitution, a provision of about the same tenor as that which the gentleman from Storey proposes to incorporate in ours. And the question I know was made an issue in every canvass there, both in the mining and the "sow counties," whether or not the mines should be taxed; and the Legislature of that State, although acting under the solemn oath of office, taken by the members, never considered it incumbent upon them to pass a law taxing the mines of California.

Further than that, the mines of this Territory are owned in part, and some of the most valuable mines of the Territory almost wholly, by men who are foreigners—aliens, who wish us no good. I have it from very good authority that the Spanish mine, for one, is now almost exclusively owned by foreigners. They send men here to take out the gold, or the bullion, and when it is taken out, it is sent to the city of London, and there is nothing left to show for it in this Territory. What other country in the world allows a thing of that kind to be done on its public domain?

Now, while I hold that it is impolitic for the National Government to tax the mines as property—for I do believe, (I say it only as a private citizen, for I am not professing to be well versed in legal matters,) that it is illegal and unconstitutional, to impose a tax on the mines themselves—at the same time I believe that it would be in violation of that constitutional provision which says that all taxation shall be equal, to exempt the possessory rights in the mines, which are property, from taxation. I do not believe that we have the right to tax any particular species of property to the exclusion of any other species of property.

I desire to go to work in this matter of organizing a State Government in a business-like manner. Any business man would assuredly fail in his projects, unless he should first consider his resources, the hazards of whatever investments he might be about to make, and whether or not the end would justify the means. Now, sir, upon that principle, I propose, as a matter of business, to go before the people of this Territory, and say to them—and I believe it to be the true and solemn conviction of this Convention—that having carefully examined every question having a bearing upon the case, this Convention has come to the conclusion that a State Government cannot be supported without the taxation of the mines. And inasmuch as the mining interests demand a change in the status of our Government—for it is the mining interest alone that asks for the change, the industrial and agricultural interests being satisfied with the present condition of things—inasmuch as the representatives of the mining interests demand at the hands of the people a change in their status of Government, therefore we call on you to come forward and in this canvass decide this one plain proposition: Are you willing that this great interest, the interest which demands this change, shall contribute its share to the support of the new form of Government? Let that question be fairly decided, and then there will be no dodging the issue, no decisions of the Supreme Court to wait for, no necessity to make up issues upon any proposition. I want it so plain that he who runs may read. I consider that the proposition of my colleague (Mr. Johnson) exactly meets the case, and hence I am in favor of it.

I regard the duties of a delegate in this Convention in a rather different light from what some gentlemen do who have addressed the Convention upon this subject. I believe, sir, that while the delegate should have an eye to the particular necessities and wants of his immediate constituents, he should at the same time look abroad to the whole Territory, and attempt to compromise and combine in such a way that the final action of the body shall be as nearly perfect as possible. Now, I am satisfied—and I am tolerably well acquainted with the feeling of the people of the whole Territory on the subject—that no Constitution which provides that one part of the residents of the Territory shall pay all the expenses of the Government, the benefits of which are to accrue entirely to the other part, will ever receive the endorsement of the people. That is my position. The mining interest being the predominating interest—the interest that seeks for the change in the form of our Government—I say it ought to be the interest that should most promptly come up and support the Government. And its representatives should most willingly and cordially support the amendment which proposes to allow that interest to be taxed.

Look around you, sir, and see what other interests we have. You cannot find a single State in the American Union, and I doubt whether you can a single Territory, that has ever at any time been admitted into the Union as a State, that is, or has been, so entirely devoid of any and all other resources except that of the one great interest, so poverty-stricken

in every other respect, as ours. Now, when you look abroad over these barren plains can you for a moment suppose that a State Government can be supported by the few hard-working men who have occupied their little potato patches, and are trying to build up those homes which we have been endeavoring to exempt from forced sale? Do you propose to get at them, and tax them, and to let the miner escape?

But it is asked—How are we going to get at the "hole in the ground" so as to tax it? I will tell you how I propose to do it. I propose to do as the assessor did by me last fall. He came to me and said: "Sir, hold up your hand. You do swear that the answers you will make to the questions I put to you, shall be the truth, the whole truth, and nothing but the truth." Now, if a man has expended two thousand dollars where it is entirely worthless, will he not swear that he has done so, and thereby escape taxation? On the other hand, the San Francisco capitalist who comes over here to increase his wealth, will have to respond to that oath. He is the man who makes us serve on juries for his benefit. He appeals to our courts, and our officers serve summonses and other papers for him, while he sits in quiet and ease in San Francisco; and we do all these things for nothing. Is that justice, I ask? Or is it anything approximating towards justice?

I insist that, as business men, we should take a reasonable position in this matter. If we are opposed to the taxation of the mines in any form, we are really opposed to a State Government. If you put a clause into the Constitution stating that all property shall be taxed equally and alike, then carry it out. But you intend to put that clause in, because otherwise your Constitution would be in contravention of the Constitution of the United States, and we have already adopted that. Now, will not that compel you to tax the mines? On the other hand, if you do desire to tax the mines for the support of that government which the mining interest imperatively demands, then, I say, come up and say so, in plain, unmistakable terms, so that when we go before the people in the coming canvass, nobody will be cheated, but we shall all be able to vote understandingly.

Mr. BANES. I do not know that I can throw any additional light upon this question, after it has been so fully discussed. I admire the clear and able manner in which gentlemen have elucidated this subject, and while I confess that I do not like, more than other gentlemen do, to sit here so long without coming to a vote, yet I must say that if we have spent any day well since we first convened, I think it has been this day. I think we understand the question a great deal better now, than we did in the morning. I confess that I have heard arguments in opposition to my own views on the question, which I did not suppose existed, and on the other hand, I have heard arguments in support of the position which I had settled down upon in my own mind as the true one, for which I am very thankful indeed.

Now, we have three several propositions before the Convention. We have first the article as it stands in the basis which we have adopted in the old Constitution, and that I regard as clearly providing for the taxing of the mines. It declares in terms that cannot be misunderstood, that mining property, and everything pertaining to the mines themselves, shall be taxed just like any other property existing within the bounds of the State. But it is alleged, and I think truly, that though the provisions of that section were sufficient, under the circumstances existing at the time of the former Convention, yet they are not sufficient under the present circumstances, or in the condition of things under which this Convention assembles. This body is convened, as has been stated by our worthy President, under an Enabling Act, and having in view the special provisions of that Enabling Act, our President proposes an amendment which clearly, and beyond all question, covers the ground, that not only shall mining claims and mining property be taxed like farms and all other kinds of property, real and personal, but that also anything which can be designated as a possessory right, shall be taxed. He thinks that the words "possessory rights and claims," covers everything which can possibly be enumerated in the list of things of value. Now, sir, if I occupied the position of that gentleman—if I believed that everything which has a value, or which could be sold for gold and silver, should be taxed, I would unquestionably insist on the amendment which he proposes, because I am free to confess that I do not think anything materially short of the language of that amendment would cover the ground which he and his friends desire to have covered.

And here I will say that I am unequivocally opposed to placing any language in this instrument that will require—as it has been confessed here that certain language proposed would require—judicial construction, or interpretation by the Legislature. I want to meet the issue here, fairly and squarely. If all property, regardless of its surroundings—regardless of any question of profit and loss—if everything that has a market value, that will bring dollars and cents, must be taxed, I want to say so. If, on the other hand, we recognize a difference between property in mines and property in town lots and in farms, then I want to recognize that fact here, and state it in the Constitution so plainly, that it cannot be misunderstood.

But there is another class of men in this Convention who desire to take a medium ground, and they propose merely to strike out the words "mines and mining property." I have referred to two classes—the one which insists that the mines shall not be taxed, and the other insisting that everything which will

lars and cents shall be taxed; and besides these, I say, there is another class here, who insist that the words "mines and mining property" ought to be stricken out, thus leaving it an open question before the people next fall, when the Constitution shall be submitted for their ratification or rejection, and an open question also in our future Legislatures, and in our Courts. They insist on leaving the matter vague and undetermined. They seem desirous—and I do not question their motives in the least, though I do question their policy very much—of leaving the subject in such a shape that they can go before the agricultural constituencies and say—"Gentlemen, this Constitution allows you to test the question as to whether the mines shall be taxed or not, in the Legislature, and in the Courts of the State." Then, on the other hand, gentlemen of the mining counties could go home to their constituents and say—"Gentlemen, this Constitution does not provide that the mines shall be taxed, but it leaves that matter just as it is in California, an open question, so that if you vote for the Constitution you can have this remedy, that you can by your political power send men to the Legislature who will decide in your favor by refusing to tax the mines, and if that should fail, you still have your remedy before the Supreme Court."

Now, sir, I do not desire to see the mines taxed indiscriminately; and, on the other hand, I do not want to see the "cow counties" taxed exclusively. I desire to see a fair tax levied upon the proceeds of the mines, either net or gross. If the net proceeds could be ascertained with any degree of certainty, that, unquestionably, would be the fairest, and in all respects the best plan; but as it is not probable, however, that any Legislature ever will assemble at the capital of our State, capable of devising a plan by which the net proceeds can be arrived at with exactness, I desire to see the question of net proceeds or gross proceeds left entirely open for the exercise of the discretion of the Legislature, governed by their experience and the experience of other legislative bodies. I say that no Legislature can devise a plan by which to determine with certainty the net proceeds of the mines, because, so far as my experience is concerned, I know of no means by which the net proceeds of anything can be determined successfully and accurately. As a general thing, in levying licenses or any similar tax, it has been found expedient to levy such tax on the basis of the gross, and not the net proceeds. But as the Convention in its wisdom has seen fit to vote down a proposition to tax the gross proceeds of the mines, I need not dwell at length upon that view of the case, because I may consider the question, at least for present purposes, as having been decided. But I may say this, however, that notwithstanding the fact that we have spent so much time in considering this subject, although I am no prophet, nor the son of a prophet, yet I feel safe in making a prediction that the time will come, and that before long, too, when that basis of taxation will be the settled policy of this Territory or State, whichever it may be, in taxing its mineral wealth.

Gentlemen may ask, what in this state of things I would propose? I reply that I intend to propose an amendment covering this very ground. It is not now in order, and therefore I shall not offer it until it shall be in order. I shall vote upon the policy of choosing the least of two or three evils, and I shall vote in reference to all the propositions before us upon the idea of choosing the best, and then when they are all disposed of one way or another, I shall propose to strike out the whole section and substitute this, the first part of which is in the language of the amendment proposed by the gentleman from Ormsby (Mr. Johnson):

SECTION 1. The Legislature shall provide by law for the assessment and collection of taxes by a uniform rule, so that taxes shall be assessed and collected on all property, possessory rights and claims, according to their true value in money: *provided*, that no tax shall be imposed on any mining claim, or possessory right thereto, which, at the time of making the assessment, has a market value in money of less than five dollars per foot.

Now, sir, I know very well that it is not strictly in order now to discuss that proposition, but in view of the fact that an amendment of that kind is proposed to be offered hereafter, I wish to present my objections to the amendment we have now immediately before the Convention.

Mr. LOCKWOOD. Will the gentleman permit me to ask him a question. How does he propose to ascertain the value?

Mr. KINKEAD. By the Assessor.

Mr. BANKS. I believe it is generally conceded that what the gentleman from Ormsby (Mr. Lockwood) himself has so frequently stated, is true, that the value of property can be ascertained without difficulty. He said the value of his property was ascertained by his holding up his hand and swearing to its value.

Mr. LOCKWOOD. I only wanted to see if we could agree upon that point.

Mr. BANKS. I think we agree more nearly, perhaps, than the gentlemen would think. He proposes to raise a revenue to support the Government, and I propose the same thing, but I do not propose, in order to do that, to tax a man for his hopes of future wealth. If a man, through his scientific knowledge, or his skill as a prospector, or the mere ardency of his hope, comes to the conclusion that down somewhere in the earth there is a valuable mine, and thereupon starts to develop it; if he supposes, what nobody else perhaps does, that it is worth thousands of dollars, I do not propose, therefore, that it shall be taxed for such an amount. But just as soon as it is developed sufficiently to make it an object of value, to the very limited extent of five dollars a foot, then I desire that he, like all the rest, should be taxed.

Mr. NOURSE. I wish to ask the gentleman

one question, in good faith. I would like to ask, in reference to taxing a miner's expectations, if those expectations can be sold in the market to pay the tax, in case it is not paid, is there any good reason for not taxing them for so much as they will bring?

Mr. BANKS. I will endeavor to answer that question at the close of my remarks.

Now, sir, our very learned and worthy friend from Storey, (Mr. Brosnan,) presented a proposition here, in regard to which I did not agree with him, but to which, for the purposes of this argument, I now propose to refer. Substantially, he propounded the inquiry—"What is a mine?" He undoubtedly referred, though he did not dwell upon it at length, to the definitions of mines which were given last summer, and I do not know but he is the author of the argument which was published last summer, based upon the definition given by Webster, that a mine is an excavation in the earth from which minerals are taken. Now I claim that that kind of definition will not distinguish what we may regard as a valueless mine from a mine embracing great value. It is not sufficiently clear and distinct to rely upon as a part of a constitutional and statutory provision. I am inclined to believe that that gentleman's views and my own quite agree as regards this question, but I wish to go a little farther than he does. I desire to have that state of things by which only that kind of mine which produces metals of value shall be taxed. I desire to place in the Constitution something more definite—something which will distinguish between mines which are of little value and those which are of great value. I desire to fix a limit somewhere between mere prospecting and mining. If five dollars a foot is too little, or too much, then change it to some other figure; but give us some assurance that persons who are engaged in prospecting will not be subject to burdensome taxation. Let the miners be assured of that.

Now, I say there is a vast difference between a prospecting enterprise—in entering upon which men may think they have good reason to believe that success will attend their efforts—and a farming enterprise. A man, for example, locates a mining claim which he believes to be a good one. He is willing to take the chances there, under all the circumstances, and he conceives that by the expenditure of a considerable amount of money, and a considerable amount of labor, he will make himself wealthy. Perhaps very few others believe with him; but it may be that there is some one man, perhaps, who, relying upon the good judgment of the prospector, or relying upon other circumstances, conceives the same idea, and he offers the locater three dollars, four dollars, or four dollars and a half per foot for his claim. Now, that man, understanding the lay of the ground, understanding the topography of the country, and the mineral indications there, perhaps does not want to give up his chances. At the same time, under this proposed constitutional provision, he would be compelled to pay a tax equivalent to the amount offered by his equally sanguine neighbor. I do not think that is just or wise. I would like to encourage prospecting enterprises, not merely those of men who ramble over the hills to find places to dig, but those also which involve the sinking of shafts and the running of tunnels, in searching for mines which may exist beneath the surface of the earth. The prospecting of a ledge to find mineral deposits, is as much a part of prospecting, as is roaming over the mountains in search of indications. I hope, therefore, in that view of the subject, that we shall leave this section in such shape, by the adoption of an amendment similar to this which I am now prepared to offer, that while the mines and everything else will be taxed as property generally, we shall except those mines which are not worth at least five dollars a foot, and exempt them from taxation.

The Convention might adopt a provision of this nature, that no mine shall be assessed which during the year previous to the assessment has yielded less than a certain specified sum, say one thousand or five hundred dollars, if you please. By either of these modes, we can accomplish this desirable result. And with this thought I close. We can secure this condition of affairs, and thus we can secure the taxation of all those valuable mines which are generally owned by non-residents. We can, in that manner, derive all the revenue from the mines that we can reasonably expect, and at the same time we need not oppress the prospecting enterprises. That policy, in my opinion, is the best which can be adopted, since the Convention has determined not to tax the proceeds of the mines.

Mr. DUNNE. This, I believe, is the only day since we have been here, on which I have not thought we have had too much discussion. I confess that to-day I have been anxious to hear the subject before us discussed, in all its lights and in all its bearings, as it is the one great feature of the Constitution we are framing, the one great question which we have to determine, upon the determination of which depends the value, or the effect, of all our action. Because, as this subject shall be determined, so will the people of the Territory determine either to adopt or to reject this Constitution.

Now, we must remember that we are sitting here in an entirely different capacity from that of a legislative body. We are not assembled here in the character of men who are under their oaths with regard to taxation—that they shall by their votes, in establishing that taxation, do certain things, or comply with certain requirements—but we are rather to consider ourselves in the light of delegates met together for the purpose of establishing a confederation. And in that view we have, to some extent, a right to offer our compromises, one to another, in order finally to determine what shall be the

fundamental principle under which we will consent to confederate ourselves, and by which we will hereafter require our general legislation to be governed. Therefore the question is not now altogether, as I consider it, an absolute, abstract question of strict legal justice between men, but it is a question as to the general policy to be pursued in the formation of our State Government. That is the view which I take of the matter. And again, under that distinction, I hold that whatever is the best policy for us to adopt, is the most strictly just to us all, and the most promotive of all our interests; for we are all interested in the success of this new, coming State. Whatever policy, as a general one, is adopted that is best for us all, is certainly just for us all. Now, on that principle of confederation to which I have alluded, and under that idea, that we meet here to offer our compromises one to another, and to endeavor to adjust matters among ourselves, and see upon what principles we can agree to act together to further our mutual interests, I deem it entirely appropriate for each member to consider the interests of his own section of country, at the same time endeavoring to harmonize those interests as far as possible, with the one leading idea of the general interest of the whole.

Viewing this question before us from that stand-point, I do not believe that the mines should be taxed at all. I do not think it is the best policy for us to impose any tax upon the mines. Gentlemen will say in answer to that: "Would you allow millions of capital now in San Francisco, in New York, in London, or in France, perhaps, to be represented here, and to derive benefit from our mines, and yet impose no tax upon that capital?" Certainly, I reply; I would do so, and I believe it to be good policy to do so; for what are we without that capital? What the mining interests here are to the agricultural interests, that capital is to the mining interest. Without capital, our mines are valueless. We have not, and never have had, in this Territory, the capital necessary to develop our mines, and we are, therefore, dependent for their development upon foreign capital. It has enriched us to an extent of which some members are not aware, and instead of endeavoring to levy a tax upon it, my opinion is, that we ought, as far as we can, to adopt such a liberal policy as will be calculated to call in to our aid capital from all parts of the world, for the presence of that capital, and its employment among us, will more than compensate for the loss of the small amount which might be derived from imposing a tax upon it. So much in regard to the general proposition to tax the mines, which I do not regard as being in accordance with good policy under our circumstances.

Now, with regard to the different interests; the representatives of the agricultural interest, viewing it by itself alone, tell us: "If you impose a tax which exempts all mining property, you throw the burden of supporting the Government entirely upon the agricultural interest." In reply to that, I ask, what is that interest, without the mines? Impose a tax which shall encumber the mining interest, which shall destroy it, or thwart its development, and you thereby strike a ruinous blow at the agricultural interest. Then again, with regard to the expenses of the Government; statistics have been submitted here to-day, which I had already prepared, though on a somewhat different basis in one respect, for I divided the taxable property of one county, as I considered that it was partly agricultural and partly mining, upon the basis of revenue, as [illegible] in the report of last year. I find that the taxable property of the Territory, exclusive of mining property, amounts to a little over twenty-five millions of dollars. I find that aggregate amount of taxable property, by dividing the taxable property of Lyon and Churchill Counties equally between the two interests, mining and agricultural, to stand, nineteen millions taxed to the mining communities, and six millions taxed to the agricultural communities. I do not think that the distinction is properly made, when we are told that the agricultural counties are a section by themselves in this Territory, having no interests except those which are co-extensive with the limits of the agricultural counties. I hold that the proposition, properly put, would be, that we all own these mines, and that therefore the policy of exempting them, is a policy which commends itself to all the residents of this Territory. The mines are not owned in the mining counties alone, for the people in the agricultural counties are largely interested in them; and so also, but not nearly to the same extent, persons in the mining counties are interested in the agricultural interests. Persons who have their capital invested in mining claims, also own houses and lots, and agricultural lands, which are property in those counties, and hence, by exempting the mines from taxation, they bring a heavier tax upon themselves, so far as that property is concerned. Storey County has property more exclusively in the mines than this county has, but Storey County would feel the additional tax upon any other species of property, as much as this county would feel it. For that reason, I consider that we are all interested alike in this matter.

Again, if the people think there is a great discrimination in favor of mining property, and that capital invested in mining has so great an advantage over capital invested in agricultural pursuits, as they obtain money to invest, they will take advantage of that circumstance, and people in the agricultural counties will eventually come to own more and more of the mines, and will reap more and more of the benefits of that exemption.

Then with regard to the argument advanced that the people of the agricultural counties are called upon to pay a tax to support the courts

which are engaged in determining cases affecting the mining interest alone; do gentlemen reflect for a moment that the courts which adjudicate the mining interests are all situated in the mining counties, and that each county pays the expenses of its own courts? The mining counties, therefore, themselves, pay for the adjudication of mining claims. Does the court of this county have its calendar crowded with mining cases, or is that the case in the courts in the mining counties only? The only exception to this rule is in the Supreme Court, and in that court all are alike interested. Then again, independent of that fact, are not all indirectly interested in this litigation?

[Mr. CROSMAN in the Chair.]

Mr. JOHNSON. Will the gentleman from Humboldt let me interrupt him right here? He is possibly placing me, and other members, in a false position. I have not, in my argument, attempted to classify the taxable property of the Territory by counties, but what I attempted to illustrate, was the difference in the application of the proposed rule of taxation to mining property, and to property of other descriptions. Because I think that even the figures presented by the gentleman from Storey (Mr. DeLong) show this fact, that a large proportion of the property in Storey County last year, was other than mining property. I attempted, not to discriminate between those counties, as to their being mining or agricultural counties, but to show the difference in respect to taxation between mining and other property. The only classification I sought to make was in regard not to counties, but to property.

Mr. DUNNE. Well, the gentleman admits, then, that the charge made against the members from the mining counties, that they were seeking to force the burden of taxation upon the agricultural interests alone, applies with four-fold force to Storey County.

Mr. JOHNSON. As I made no accusation of the kind, I am not called upon to plead guilty or not guilty. The broader proposition I attempted to illustrate was simply this, that it was here sought to discriminate, in the matter of the burdens of Government, between different species of property. I want those burdens made equal. Whilst I was speaking, I made no allusion to the kind of property in the different counties. I am one who would be individually affected by exempting the mines, and many of my constituents would be similarly affected by it. It makes no difference whether we live in an agricultural county and have property in a mining county, or *vice versa*. It was the property, and not the counties, to which I referred.

Mr. DUNNE. Whilst we are referring to the speech of the gentleman from Ormsby, will he answer me one question. Did I understand the gentleman correctly to-day, as giving it as his opinion that if an accurate assessment were made of the property in the Territory, other than mining property, for the coming year, it would not show a basis of taxable property more than one-half as large as the assessment of last year?

Mr. JOHNSON. No, sir; I said, in the county of Storey, the last assessment of fourteen millions of dollars, would not represent more than one-half of that amount by valuation. And I cited as an instance, the fact that a piece of property there was assessed for six thousand dollars, which to-day the gentleman who owns it would be willing to sell for ten hundred dollars. At the same time I stated that the taxable property of Ormsby County probably would not be found to have depreciated a single dollar in value.

Mr. DUNNE. The gentleman admits that the assessment of property, other than mining property, would fall below twenty-five millions of dollars, in the Territory, at the present time?

Mr. JOHNSON. I do not recollect that I made any estimate as to the amount of property in the Territory. I referred to Ormsby County, and I assumed that its assessable list would not fall short of that of last year; and likewise, that the property in the county of Storey which was assessed for last year at fourteen millions of dollars, the present year would not exceed seven millions of dollars. As to the assessable value in other counties, I cannot say.

Mr. DUNNE. Last year the entire Territory was assessed in the aggregate at a little over twenty-five millions of dollars.

Mr. JOHNSON. In Washoe, and possibly in Douglas County, I think I may say the amount of property will not be diminished. Relative to other counties, I have no personal knowledge or acquaintance with their financial condition. I will state further in this connection, that in the estimate we made at the sitting of the Convention last year, we placed the property other than mining at twenty-five millions of dollars, and the mining property was estimated at sixty or seventy millions. We had thus a basis of taxable property of at least eighty-five millions of dollars upon which to rely for the support of the State Government. Now, if the mines are exempted, and the amount of property other than mining property is reduced in value, of course the basis for taxation is subject to reduction in the same proportion.

Mr. DUNNE. Very good. Now, as the gentleman has narrowed the question down to what I consider the true principle, so far as its position is concerned, I would like, before the question is determined, to hear him address himself distinctly to this point: whether or not it would be politic for us to exempt mining property from taxation—without raising the question of whether or not it is a matter of injustice to force a tax on a certain species of property upon us, because that is not the question before us. We are not obliged yet to levy any tax for the support of our State Govern-

...ation. The question is simply whether it would be politic for us, in launching out our organization as a State, to adopt that policy of taxing the mines or not. That is the reason of my opposition to a State Government. That is the reason why I introduced the resolutions I did early in the Convention, to adjourn sine die. I saw that the taxable property, aside from the mining interest, was estimated at only twenty-five millions of dollars, and believing it to be impolitic for a country like ours, dependent entirely upon the development of the mining interests, to attempt to hamper those interests, at the beginning, I looked around to see what we had to support a Government upon without doing that. I believed that it would be suicidal policy to tax the mines, and when I found that there was only twenty-five millions of taxable property other than mining property, with which to carry on the State Government, I concluded that it was unwise and impolitic in every sense, for us to attempt the organization of a State Government. That was the reason of my opposition to it, and I hope the Convention will pardon me for again introducing that subject, because I do it only to show that I have been entirely consistent.

Mr. FITCH. Will the gentleman permit me to ask him a question? What does he estimate would be the expense of a State Government now?

Mr. DUNNE. Well, sir, from the experience I have had in other States, and my knowledge of the class of men who will be called upon to administer the new State Government, I cannot put it at less than three hundred thousand dollars a year.

Mr. FITCH. That would necessitate a tax of one and one-fourth per cent. for State purposes, while California raises ninety cents, I believe, on each one hundred dollars.

Mr. JOHNSON. On what basis does the gentleman from Humboldt make that calculation?

Mr. DUNNE. On twenty-five millions of dollars.

Mr. JOHNSON. That is, exclusive of mining property?

Mr. DUNNE. Yes, sir. Now will the gentleman from Storey allow me to ask him a question?

Mr. FITCH. Certainly.

Mr. DUNNE. Considering the number of officers which will be necessary under a State form of Government, the necessity for erecting public buildings, and the probability of donating money to aid the Pacific Railroad, what proportion does he think our expenses would bear, as compared with the expenses of the State of California? Does he think that our expenses would be as large as were the expenses of that State in the first few years of its existence as a State?

Mr. FITCH. My answer is, that I think the State Government, aside from the erection of public buildings, and aside from the railroad, would cost, perhaps, as much as two hundred thousand dollars a year; and that will not certainly be more than twice as large as our expenses are under a territorial condition. We are not obliged to erect public buildings at the present time, as gentlemen are well aware.

Mr. DUNNE. All estimates like these, it is well known, invariably fall far short of the practical reality, as we shall find when we come to put the State Government into practical operation. We have an example of that across the mountains, in the State of California, which has averaged, in its actual expenses as a State, over a million a year.

Mr. FITCH. I think it has not averaged as large an amount as that.

Mr. DUNNE. Yes, sir; I believe the average expenditures of that State have been computed at about a million a year. Now, in regard to the question which is at present before this body for its consideration, my position is exactly the same as that of my colleague (Mr. Banks.) But as to our expenses as a State; why, there were one hundred thousand dollars appropriated by the Territorial Legislature for one single fund last year. I refer to the appropriation of a hundred thousand dollars for the Soldiers' Fund, for bounties, recruiting purposes, &c.

Mr. FITCH. The soldiers have not seen it yet, I believe.

Mr. DUNNE. Well, it is due to them, and the soldiers will get it ultimately, as they should. I say I agree entirely in regard to putting this matter into practice, with my colleague. After having stated my position on the general policy of taxing the mines at all, I say then, as there seems to be a disposition to have a State Government, whether or no—a disposition, the manifestation of which led me to suggest to the Committee on State Seal, that instead of the words "*Volens et potens*," we should adopt as our motto, "*Nolens Volens*" [merriment]—if I cannot have the principle adopted which I believe to be correct, and if there is a necessity for some action on the subject, then I will endeavor to get it as near as I can to what is right. Therefore I would innovate on this section, as it stands here, exactly as my colleague proposes, in order that I may choose the lesser of the two evils.

Now, a word in regard to the way this matter of taxation will work in that section of the country which I in part represent. We have a very large extent of mining country there. We have, I suppose, ten thousand locations of mining ground in our county, out of all of which, we have only, as yet, four or five mines that we know are mines, and for the development of which capitalists are willing to invest large amounts, for the purpose of erecting mills, putting up machinery, and carrying on all the business of a mine. Now, if the mines are to be taxed, we desire to have only such of them taxed as can afford it. We want that policy adopted which will allow us to spend money

on our claims, so as to find out how many of them really are mines. We want no tax imposed upon a mine, until we have positive and indisputable evidence that a mine is there to be taxed. We can then incorporate upon our undeveloped locations, and levy assessments, and spend our last dollar, if it is wanted, in running tunnels, to discover whether or not we can make mines of them. But these claims now have a market value. Some of them are worth a dollar, some five dollars, some ten dollars, and some of them twenty dollars a foot, under the liberal policy now pursued in regard to them. But put a tax on those mines, and they will generally fall in price to almost nothing. No revenue will be realized from them, and no prospecting will be done, but the whole growth of the country will be retarded, and mining will only drive itself through by chance, if at all. New mines may possibly be discovered. In some of these claims men may concentrate their efforts, all uniting on some one claim, and expend a little cash from time to time, but carefully, now that a tax is levied, and the development of the mines will only be accomplished after years of labor, if at all. But grant us a liberal policy, let us search for our mines free from taxes, and all unnecessary expenses until we find something of value, and then tax us. If you must tax us, wait at least until then. With this explanation of my views, I will leave the subject. As so many had already explained their views upon it, I thought that to remain silent, would look like a disposition to avoid an honest expression of my sentiments, and I have no desire to conceal them.

Mr. EARL. I have some hope now that we may agree upon a fair and equal basis of taxation. It seems to me that the two extremes are coming nearer together. I have, heretofore, as our President will remember, proposed the taxing of the gross proceeds of the mines. I thought that the Legislature should be allowed to fix that taxation as they may see proper, and that we could arrange the matter, simply by striking out those words proposed by the gentleman from Storey (Mr. Toser) to be stricken out, although that might possibly leave it questionable as to whether or not the mines would be taxed at all. There seems at least to be a doubt in the minds of many, and therefore, to remove that doubt, I think we should insert such language as will make it clear, and leave it in such a manner that the Legislature will be placed under obligation to tax the mines, or to assess them upon a fair valuation. I believe that can be done, and yet not make the provision objectionable in regard to prospecting mines. I did not suppose that any gentleman here would propose the taxation of a prospecting mine, which has really no value at all until a ledge is struck, or at least the appearance of a ledge beyond all doubt. My proposition was, that if we should insert a provision taxing the gross proceeds, it would answer the purpose. By pursuing that course, when the act of Congress shall be put in force we can reach the gross proceeds, in the same way that the Federal Government does, as the bullion passes through the different assay offices. The Legislature could frame an act by which we could tax that bullion for State purposes. A still better way would be, to have a government assay office, and when the bullion is passing through that office, then it could be taxed for State purposes. We could then reach the capital invested in mining, to a certain degree, because the amount paid out for labor would be returned in bullion, and we could reach that bullion and tax it. This would be a fair taxation, and I, for one, would be perfectly willing to vote for a clause of that kind.

Again, as to the other proposition for taxing all mines which are above a certain value, I think that would answer the purpose, but it appears to me that it would be more objectionable than the proposition to tax only the proceeds. If we place such language there, that the Legislature will have something which they must act upon, I have the utmost confidence that we shall be dealing justly with all portions of the Territory. We ought to endeavor at the same time to foster the agricultural interests of the State, and certainly should do nothing which may oppress that interest, any more than it should attempt to inflict a stab upon the life of the mining interest.

Now, in relation to the taxation of toll-roads, referred to in this discussion; if I am correctly informed, toll-roads are subject to a tax, levied directly upon the franchise. For county purposes, they are taxed upon the franchises, but I had an impression that for territorial purposes, they were taxed upon the proceeds. That is a case where it is easy, by a fair valuation, to reach the proceeds. But the net proceeds, as the gentleman from Humboldt (Mr. Banks) has said, cannot be separated from the gross proceeds, and to impose a tax upon the net proceeds, would be to leave the matter a question of doubt and uncertainty. Let us place in our Constitution such language as beyond a doubt will reach the mines, for unquestionably they should be made to pay a portion of the expense of carrying on the State Government. I think the proposition of the gentleman from Humboldt (Mr. Banks) is a fair one, and I hope that no gentleman here will refuse to unite with and coöperate with the representatives of the mining districts, in a proposition of that kind. Either that proposition, or the taxation of the proceeds, would, in my judgment, be fair and just.

Now, so far as the judiciary is concerned, I hope we shall provide for a self-sustaining judiciary, if it can be done. There is a large amount of capital invested in the mines in our Territory, which is now locked up by litigation upon litigation, and it is becoming a heavy tax upon the Territory, as it will be upon the State that is to be. The Committee on the Judiciary will probably bring forward here a

judiciary system which will be a self-sustaining one, and that I look to more than anything else, to relieve this Territory of the heavy burden now resting upon it. Under such a system, litigation would cost the parties litigant, of whatever interest, whether agricultural or mining, very little if any more than under the present system, while it would cost the State little or nothing.

As I have already said, I supposed there was not an individual here, who would seriously propose to tax a prospecting mine. I might have a mine which I would refuse to sell for even five dollars a foot, or more, and still it might not be worth that amount, and possibly not worth one cent. I might spend thousands upon it, perhaps, never realising anything. But if I do reach something of value in that mine, and prove that it is a mine beyond all question, then it should be taxed. But the gentleman from Humboldt (Mr. Banks) offers a different plan, namely, that whether it is an actual mine or not, if it be worth five dollars a foot, it shall be taxed. There can be no objection to that, certainly, on the part of the agricultural interest. For one, I am willing to decide this matter upon any basis that shall give us a uniform taxation, and I hope we may be able to unite upon some basis of that kind, although I would prefer the taxation of the proceeds.

Mr. TOZER. Several days have now elapsed since this Convention, in its progress through that Constitution which we have adopted as the basis of our deliberations, reached the section now under discussion, at which time I proposed the amendment which has elicited so long a debate here to-day. Since this discussion commenced this morning, I have listened to it with great pleasure, and, I believe, with considerable profit. So much has been said, and so well said, that I find myself now with but little left to add to those arguments which have been presented by gentlemen, so much more able than myself, who have preceded me. I have sat silent during the debate, because I am not much of a talker, and I know I should not succeed very well in the attempt, if I tried to be one. But there are one or two ideas which, if the Committee will patiently bear with me, I will attempt to elucidate.

Now, in the first place, in regard to the matter of levying a tax upon the property within the borders of the new State, for the support of its government, we find that there is a wide difference of opinion as to what constitutes property. Those who advocate the side of the question which is adverse to the views I entertain, think they can discover a species of property in the mines; but for my part, I have failed and do still fail to see in the mines any property of such a nature that it can justly be subjected to taxation. Some of our mines have been described by speakers who have preceded me, as "a hole in the ground;" but, sir, they might all be characterized in that way, whether they be valuable or valueless. The Gould & Curry mine is but a hole in the ground, although rather deeper than some others, for instance, those in Lander County, in Spring Valley, in my own county or elsewhere in the Territory. But in my opinion, the Gould & Curry mine is no more a subject for taxation, legitimately and justly, than is the poorest, least productive mine in the Territory. The great difference, sir, between that species of property and the property lying in this county, or in any one of the agricultural counties, is this: A mine—a productive mine, I mean—the longer and more successfully you work it, the less valuable it becomes. Who would assert here, sir, that the Gould & Curry mine, which has been so frequently referred to to-day for illustration, is as valuable now as it was two years ago? Millions upon millions of dollars have been extracted from it, and put into circulation, adding, to that extent, to the wealth of this Territory, of this coast, and of the world; and that mine, say what you will, is, in consequence, depreciating in value. But every dollar which has been abstracted from it, and put into circulation, and every dollar which shall be abstracted from it in the future, has added, and will continue to add, so much to the value of the other species of property which surround it. Now, the farmer tills his farm, and raises his crops, this year, and next year, depending, with absolute certainty, upon the arrival of seed-time and harvest, year by year, now, and for all time to come, as long as he may live, or his children, or his children's children after him. But let the Gould & Curry, or any other mine in the Territory, be worked as thoroughly, energetically, and successfully as that mine has been, and it will be but a few short years before it will be rendered utterly worthless.

Mr. HAWLEY. Will the gentleman from Storey allow me to interrupt him for one moment?

Mr. TOZER. I would rather not, because I am so unaccustomed to debate. I will soon be through, and then the gentleman can say what he pleases, without interrupting me.

I was about to say, sir, that the crop will not grow again, in the Comstock, or any other mine. When the present crop is once reaped, it is reaped for aye, and the Gould & Curry, and other mines, will soon be exhausted. And by the word "soon," I do not mean to-morrow, next week, or next year, but, in all probability, we will all live to see that time. Other mines as famous, and as productive, may be discovered, but those mines to which we all now allude in illustration of our debate, will then have become utterly exhausted. Four years ago, when I first settled at that point, the Comstock ledge was successfully worked immediately on the surface, but now we are mining there at a depth of four hundred and sixty-five feet, having gone down at the rate of two hundred feet a year. At the rate we are now

working it out, that ledge will be exhausted in a very few years, and I think the mind of every member can readily reach that conclusion. Only a few years will elapse before these mines will be worked out to a depth beyond which human ingenuity will fail to go. Then why should the Convention insist upon singling out those mines which are now producing, which are adding to our wealth from day to day, and levying an onerous tax upon them, for the support of our State Government?

Mr. Chairman, I do not deem it necessary to tax those mines for the support of our State Government, if it is to be an economical State Government, such as we can, and I hope will, organize under the Constitution which we are now deliberating upon. Such a Government can be supported, well supported, respectably supported, through other, and more proper, more just, more equitable means. The taxable property of this Territory is increasing, and it is fair to continue to increase in such a ratio, that there is, and will be, enough property, real, tangible, actual property, available for all the purposes of taxation, to support the State Government, without taking such intangible, fleeting property as the mines, upon which to levy a tax. And the taxes will not be more burdensome then, than the people of other States and Territories on the Pacific coast have borne for years. I believe that to be a fact, and I do not believe that the proposition can be successfully controverted. If such be the case, sir, I say let us foster this mining interest, which is apparently the only support of all other interests in this barren wilderness which we are now attempting to convert into a State, by the will of the people. Let us foster this interest, and remove from it the burden of taxation as far as possible. Let us, in the commencement of our State existence, levy a tax upon the net proceeds, and not upon the gross proceeds, for which some have contended; because, in many cases, I might say in ninety-nine cases out of a hundred, or even nine hundred and ninety-nine out of a thousand, the gross proceeds of mines in this Territory are absorbed in the working, and misfortune and ruin are the only net proceeds derived from them. In Storey County, with which I am most familiar, although I have traveled a good deal elsewhere in the Territory, all the mines which I am now able to call to mind that are really productive mines, are also net proceeds mines.

Mr. JOHNSON. How many of them pay taxes?

Mr. TOZER. I choose not to be catechised. I did not ask any questions of the gentleman from Ormsby when he was on the floor.

Mr. JOHNSON. I beg the gentleman's pardon. I would not have interrupted him if I had supposed it would not have been agreeable to him.

Mr. TOZER. Well, it is a simple question, easily answered. There are eight mines there, which pay on the gross proceeds; and of those, six would be taxed, according to my assessment. The other mines, located on the justly famous Comstock lode, are not paying mines, and it is altogether problematical whether they ever will become paying mines. Certainly the immense sums which have been expended on them have gone but a little way towards showing or indicating that they will ever become dividend-paying mines. Starting at the northern end with the Ophir mine, we have immediately adjoining that, the Central mine. Why, sir, nothing but the grossest injustice, the most flagrant wrong to the owners of that claim, who have been digging and delving there four or five years past, ever would suggest the idea of imposing a tax upon those men. Had you, or other members of this Convention, been the owners of about one hundred feet of that mine, you would perhaps more fully appreciate the force of what I say, because it would require a very wealthy man indeed to bear the taxation, in the way of assessments, which have been paid upon each one hundred feet of that mine up to this time. More than four hundred thousand dollars have been expended in the mine, and it has all been raised by self-imposed taxation upon the owners of that claim since it was discovered and located in 1859. So it is with the California, the Sides, the Best & Belcher, the White & Murphy, and the Hale & Norcross. Then come the Chollar, and the Potosi, following along the lead; mines which have been made famous by expensive litigation, and neither of which ever paid a dollar of dividends, but, on the contrary, have subjected their owners to heavy assessments. With the Chollar company I am unfortunately more particularly well acquainted, and I can say that there have been between three and four hundred thousand dollars in assessments levied and paid in, into that company alone. And for what? To put into circulation perhaps a hundred thousand dollars more, taken from the mine. It has cost the owners not less than three dollars for every dollar they have taken out and put into circulating, to add to the material wealth of the Territory, its prosperity and success, and its welfare in every respect. It is ill-timed indeed, for gentlemen who have reaped that golden harvest from my pocket, and from the pockets of others, to step in now and say: "Your burdens are not sufficiently heavy. Although your backs are well nigh broken, yet another straw must be laid on. We have reaped the benefit of your enterprise and labor, and the capital you have expended there, and now if, forsooth, we can better our condition by forming a State Government, we will levy an additional tax upon you. Your ground is held to be valuable, solely because it has cost you a high price, and you must pay the fiddler while we dance."

Continuing down that ledge, before you reach the Gold Hill mines, you come to the Crown, the Bullion, the Copper & Mills, the

Fairview, the Alpha & Omega, and the Superior mines; none of which have paid the owners one dollar per foot, and the history of each is very similar to the history of those I have previously mentioned. They are seldom more than a few hundred feet below the surface, and their owners are looking with hope almost bordering on despair for the little glittering particles of the precious metals which shall proclaim the fact that at last they have surely found a mine. Then come the Gold Hill mines, a few of which have paid richly from the first. South of these is the Belcher, which within a few months has paid a small dividend. And now I have enumerated the whole of the dividend-paying mines of the Territory of Nevada.

Mr. DeLONG. The Savage.

Mr. TOZER. I alluded to the Savage, I think, as one of the paying claims; if not, I intended to, at least. And yet, Mr. Chairman, the yield of these various mines, profit-paying and otherwise, has put into circulation here an enormous amount of money, day after day, week after week, and year after year, a very large proportion of which is being expended in permanent improvements in this Territory. It is being put into roads, bridges, ditches, water-works, mills, houses, stables, hotels, and the thousand and one other things which constitute the long catalogue of real and personal property. Now, if in four years we have made such rapid strides that, as gentlemen assert, and I believe correctly, we have already a taxable property outside of the mines—not outside of mining property however—of twenty-five millions of dollars, then, in a year or two longer, in the same ratio in which we are now progressing, we can entertain a confident hope, in my opinion, of doubling that amount of taxable property.

Why, then, should we stand back and hesitate about our little adventure of a State Government? Why call it an experiment? It is no experiment, so far as the amount of revenue to be derived from our property by a just and equitable rule of taxation is concerned. There is no doubt about its being sufficient to pay the current expenses of a State Government. No, sir; it is no experiment, for there is enough—plenty, and to spare—of property, which may be fairly taxed, to pay all the necessary expenses of our State Government. Let that be done, and I am content. I am in favor of the organization of a State Government, and I need not pause a moment to tell why I am in favor of it. I shall be most unequivocally opposed to the organization of a State Government, however, if the Convention in its wisdom shall decide that a clause shall be incorporated in our organic law, levying such an outrageous tax upon that kind of property which is not taxable elsewhere—in California, in Oregon, or in Mexico—for the support of that Government. No where else is such a tax as is proposed here—a tax upon real property—levied upon property in mining claims.

I had made a memorandum of a great many other points, which I wished to submit to the consideration of the Convention, but, as I said in the beginning of my remarks, most of the ground I intended to have gone over, has been already more ably occupied by others, and I will not consume further time.

Mr. MURDOCK. I am not one of those men who, as the gentleman from Humboldt, who was last on the floor (Mr. Dunne) has said, are afraid to express their views on this subject, and therefore, with the leave of the Chair and of the Convention, I will give my views, as plainly and briefly as I can.

Now, in the first place, in this article which we have been debating, as it stands, I can see nothing really objectionable, until we come down to what I call surplusage. It says that the Legislature shall provide by law for the equal taxation of all property. I would be willing to stop there, and I should think we need not say anything more. But in the opinion of some gentlemen, there is a doubt in regard to the language following:—"real and personal." If that is not enough, why not say "all other property?" And then you can add, if you please, "the rest of mankind." [Merriment.] Now I cannot conceive how any body could misconstrue the language, when we say, "all property, both personal and real, shall be taxed." I cannot see, for my life, what more we have got to do. This "mines and mining property" which is added there, looks to me, therefore, like surplusage. We might just as well have said "teams and teaming property," and "ranch and ranching property." It seems to me, I say, that it is entirely surplusage, and we had better stop there.

I have been sorry to hear some of the things which have been said to-day. Though I have listened with great interest, and I trust with much instruction to the gentlemen who have debated this question now for a day and a half, yet I have been surprised at the wide range they have taken. Some of them have come here, it seems to me, with different views from what I have in regard to our duty. Now, I voted against the adoption of the former Constitution—the Constitution which I hold in my hand—solely for the reason that I thought it was too legislative in its character. I supposed it was our duty to come here, not to legislate, but to make something that shall be to the Legislature of the State, what the chart is to the seaman—a guide and restriction, to regulate the Legislature, and keep it within certain bounds. That is the object of a Constitution, and not to legislate. I am opposed in toto to legislating here, in any shape or manner, on this subject, further than to say that the Legislature shall tax all property equally. Then I say, leave all the rest to the Legislature. Why? For this reason: that if we go on and incorporate into our organic law, a rule for

the government of the Legislature, and it should turn out to be a bad rule—if it should prove to be of such a character that the people would get sick of it, and want to change it, what will we have to do? Why, sir, we shall have to come back here and hold another Constitutional Convention, to remodel this Constitution, or to make a new one; whereas, if we leave the matter to the Legislature, and they shall see fit to tax the mines, well and good. Let them have a say in the matter. Let them try it, if they please for one year, and then if the rule works badly, the people can alter it, by sending men to the Legislature who will take such action as is called for by the wants of the people. The members of the Legislature come fresh from the people; they know what the people want, and can enact such laws as will meet those wants.

Now, the long talks which have been had here, in relation to the value of real estate, and the value of the mines, I have sat and listened to with a great deal of interest. Sir, I was one of the early miners of California. In the course of one of my prospecting tours, in the year 1853, I came over through the mountains until I got to the northern end of Lake Bigler, or Lake Tahoe, as it is now called, and from there I was driven out by the Indians, together with the rest of my party. We prospected there until the Indians shot us full of arrows, and then we left. [Laughter.] I remember that at one time I camped with Livingstone and Kinkead, on the very property which is now owned by my friend here from Washoe, (Mr. Sturtevant.) And what was that property worth then? Dr. King lived at that time up here in the cañon. And what was that property worth there? I ask gentlemen just to compare its value in 1853 with what it is worth now; and if it is worth more now than it was then, I ask what has made it worth more now? Who would have come here to live, and build up this Territory, if the energetic prospector had not come here first and found the "ore" here? I say that is what has made the property which we now have here. And ought not these prospectors to be encouraged? I do not say that they should not be taxed, when they are able to pay. I do not say that they should not pay their proportion of the revenue to be raised for the support of the State Government, in proportion as they are protected by the State Government, when they have anything to be taxed upon. And I know they are protected by the Government. But I hold this to be the fact—or it is my experience, at all events—that all this valuable property in the Territory is, and has been made what it is, by the active energy of the prospector.

Foreigners have come here with money, to develop our mines, to a little extent, but that is not a drop in the bucket, compared with what it will be, if they are properly encouraged. Old as I am, I believe I shall live to see the day when Virginia City will be a third rate mining town. Now, I represent Churchill County, which is partly an agricultural county, and the agriculture of that county depends wholly on the mines to the east of us. As to whether our agricultural lands shall be valuable or not, depends altogether upon the development of those mines. Hundreds of men are there now, hard at work, living on pork and beans. They come here for their supplies, and they go to the mountains for lumber, and they are working hard to develop the mines. And for what? They are finding rock that pays well, even on the top, and their hopes are sanguine. Now, will you go and assess them, and put a stop to their energy? If you put a tax on their enterprises, or if you assess their claims for what they imagine them to be worth, they will have to abandon those claims. I have ground to-day which I would not sell for five dollars a foot, but if I should sell it, then there is the money, and you can tax me on that. I am really willing to be taxed on what I have got, but I do not want to be taxed because I come up here to Carson or Virginia and blow a little, perhaps, about the value of my claims. [Laughter.] I do not want you to tax me until I know I have got it; but if any of you will go and buy me out, I will agree to pay the taxes for you, if there should be a tax levied on those claims. [Laughter.]

This is the reason I want the words "mines and mining property" stricken out; not because in themselves they amount to anything. I do not ask you to strike out those words because they are objectionable, in my opinion, but I consider them as mere surplusage. As I said before, you might as well add, "all teams and teaming property," and "all ranches and ranching property," and so on with everything else. The words do not add one jot or tittle to the real force of the language. I say mines are not property, until they are proven to be property. My anticipations and hopes are not property, because you cannot make them available. A, B, and C cannot sell their hopes and anticipations, and get the cash for them; and, consequently, they are not property, not being worth anything in the market. My hopes may be high, but they are not property, under the law.

Now, just as soon as the mines pay, I am willing to have them pay taxes. What is it, as I asked before, that has made property valuable in this Territory? What has made Washoe Valley valuable? What has made the mills, built by capitalists, capable of paying those taxes, which they are willing to pay on all the actual property they have? Capitalists come up here and invest the money out of their pockets, and their investments have been remunerative. Everybody else has made money here, while the only losers have been the miners. Yes, Mr. Chairman, they are the losers; they form an exception to the general rule. They are putting money into circulation, and spending hundreds of thousands of dollars, and

they get nothing. My friend from Washoe here (Mr. Stuttevant) well knows that I have spent my money freely, hundreds of dollars of it, for feeding my mules and oxen when I was hauling rock from Virginia over there, and that too, for land taken upon land which I could have had five or six years ago for nothing; and not only that land, but all the land that joins it. (Laughter.)

Now, suppose when I go back home to my constituents, and they say, "Well, Murdock; have you got a mining clause?" I answer, "Yes, we have." Then they will say, "Very well; keep your Constitution"—and I would help them. (Laughter.) We do not come here to legislate, and say what shall be, or what shall not be taxed, because what is right this year, may not be right next year. But let the Legislature impose a tax, if they please, coming fresh from the people, and I will not say a word. And when they find that it works badly, (which I think they very soon would)—when they find that it checks the prosperity of the country—they can repeal it. If it checks the energies of those who are engaged in mining, as it certainly would do, by stopping the operations of the prospectors, what effect will it have? Why, it will lessen the value of the property of the gentleman from Washoe, (Mr. Stuttevant,) and the property of every other man who raises a cabbage in this Territory. You put burdens on the mines in the eastern range, which are still undeveloped, and just in that proportion you make yourselves poorer. That is what I believe will be the effect. I cannot see the difference between the mining and the agricultural interests, in that respect. When business is good in the mines, business is good with the agriculturalists; and just as the mines pay and flourish, just in that proportion the whole country will prosper, and just in that proportion we will be able to carry on our State Government.

My opinion is, that if we have a self-sustaining judiciary—if we say that we will let them that dance pay the fiddler—we shall get along without any trouble. The clients pay these lawyers who get their high fees; and I say, let the clients pay the judges, too. I do not care how much you leave to the Legislature which is to come after us, because I do not believe that wisdom is going to die with this body. There will be men as wise as we are, and as well qualified, sent here to legislate, and they will be sent here by the people expressly to legislate, and for nothing else. With the expression of these views, which I have offered because gentlemen desired to have everybody express their views, I am willing to stand before the Convention. I may be in error; but, right or wrong, those are the principles I advocate.

Mr. KINKEAD. I presume, Mr. President, that the debate upon this question is about closed. The principles involved have been ably and thoroughly discussed, and that part of the subject I am willing to leave where it now stands. I rise at this time for the purpose merely of stating a few facts and presenting a few figures to show the probable cost of a State Government, and the basis upon which we propose to support it, as those matters may have some bearing upon the question we are considering.

The State Constitutional Convention which assembled here last fall had a Finance Committee, composed—with perhaps a single exception (myself)—of very able gentlemen, and it was their particular province to examine this very question. They canvassed this part of their duties thoroughly, and arrived at the conclusion that the lowest sum for which an economical State Government could be supported was three hundred thousand dollars a year. My own opinion on this subject has undergone no change since then, and gentlemen will find, I think, when they come to try the experiment, that the actual figures will go over rather than under that amount. In addition to that sum, we must provide for the indebtedness of the Territory, amounting now to about two hundred and thirty-five thousand dollars, and which, probably, by the time we get the State Government into operation, will reach the amount of two hundred and fifty thousand dollars. It is true that a large proportion of this indebtedness is bonded, and probably the bonds could be met at maturity, with the present and prospective Territorial revenue; still, the interest and part of the principal must be paid the first year, amounting very nearly to fifty thousand dollars. Thus we have three hundred and fifty thousand dollars to provide for in the first year of our State existence—the lowest amount, in my opinion, on which we can possibly conduct a State Government. Now then, to meet that amount of expenditure, what have we to rely upon?

Mr. FITCH. Will the gentleman give us the items?

Mr. KINKEAD. If the gentleman will wait on me to-morrow, I will do so.

Mr. FITCH. I would like the items now, for the information of the Convention.

Mr. KINKEAD. I stated that proposition as the result of the labors of the Finance Committee of the former Convention, of which the gentleman from Storey (Mr. Collins) was a member, though as he was sick during the latter part of the Convention, I am not sure whether he remained until the labors of the committee were concluded.

Mr. FITCH. But was not that estimate based upon the hypothesis that the State was to be compelled to support a system of District Courts and District Judges?

Mr. KINKEAD. Yes, sir.

Mr. FITCH. That is ruled out, now, by our proposed judicial system.

Mr. KINKEAD. Well, I suppose it amounts to the same thing; if our system makes the county expenses higher, the taxation will be the same.

Now what have we, to meet this expenditure? for we must look the whole thing in the face. We have an assessment-roll, amounting last year to twenty-five and a half millions of dollars, assessed on all the property in the Territory, exclusive of the mines. Of this amount, over fourteen millions of dollars are assessed in Storey County, and all agree that the assessment in that county has been excessive in the extreme. I do not go as far as my colleague, (Mr. Johnson,) who thought that the property in Storey County would not realise more than half what it was assessed for, but I think no one will dispute that it was assessed at least four millions higher than it should have been. In other counties the assessment was fully as high as it will probably be this year, and, sir, I do not expect that the aggregate amount of property in the Territory, to be assessed this year, exclusive of the mines, will exceed twenty millions. But taking the basis of twenty-five and a half millions of dollars—and I do not suppose it can be any more than that this year, certainly; I do not suppose any gentleman on this floor is so sanguine of our prosperity in the immediate future as to entertain the idea that our property will be likely to exceed the amount of the assessment of last year—what will be the result of our calculations? We have a gross revenue, at the present rate of taxation for Territorial purposes, to wit: one-half of one per cent., of nearly one hundred and twenty-eight thousand dollars. Of this amount, up to this time, there has been paid into the treasury about eighty-three thousand dollars, leaving the large sum of forty-five thousand dollars delinquent, and consumed in the expenses of collection. It is very easy to calculate what it would cost to raise four times the amount of last year's revenue on the same property. It would involve a tax of two per cent. for State purposes alone, to which, if you add your County, City and Federal taxes, you have in truth a "burden grievous to be borne." I simply desired to present these facts, not to comment upon them at any length at this time, as I am anxious to have this question disposed of speedily.

Now, we must learn wisdom from the past, and I simply submit this statement for the consideration of the Convention. I think, myself, that in a year or two, there will be a larger amount of other property liable to taxation. But what I want to get at, is simply this idea, that we have not property enough, aside from the mines, to sustain a State Government without extreme and onerous taxation. It seems to me, therefore, that the question is narrowed down to this: either we must tax the mines, or we must bankrupt the State Government, at its very outset.

Mr. NOURSE. I am aware that I have taken up more than my share of the time of the Convention, but I endeavor not to speak unless I really have something to say. I am appalled, I confess, at finding from the statements of two or three gentlemen here, what a ruinous business this mining is. Why, sir, if it be so comely ruinous to all who engage in it, that only six mines in the Territory are paying anything, and all the rest are not paying, now likely to pay, it seems to me that it would be the part of wisdom and humanity for us to put a fence around our ledges, and by absolute prohibition, keep men from rushing in, headlong, to their certain destruction. Shall we be doing wisely, by refraining from imposing any taxation on the mines, to encourage men thus to plunge into certain ruin, and loss of property? It really seems to me that the argument of these gentlemen goes a little too far. I do not know how far those who use such an argument actually mean it—though I am sure they would not say what they do unless they believed it. I do not know, indeed, how far their zeal in argument may have brought them to this view of the state of things—but it is generally supposed and believed, that the business of mining is what is going to make Nevada rich, and it certainly will not do that, if those who are engaged in it are always going to lose money by it; and that is all there is about that.

Now is it, in fact, going to make any perceptible difference in the amount of bullion extracted from the earth, whether a tax is levied on the mines or not? Gentlemen talk as if it were to be taken for granted that if you levy a tax upon mining property as you do on everything else, it is going to put a stop to all mining and prospecting. Is that reasonable? Here is a tax, say of two and a half, or even three per cent., to be imposed upon the mines. So far as I can judge, men do not go into operations of any kind in this country with an idea of making anything like six per cent. per annum in the way of profit. On the contrary, if their business is considered good for anything, it must yield from three to five per cent. per month; and does anybody believe for one moment that a tax of only two and a half or three per cent.—not per month, but per annum—is going to make any difference in the amount of mining carried on? I do not believe there will be a single mine the less, that is worth anything, in which mining operations will be carried on in this Territory. I do not believe it will make the difference of a single mine, whether the mines are taxed or not taxed. I believe the burden will be so light—for it will not be heavy if it is shared equally by all—that the miners will not notice it, except as their attention may be called to it by politicians, who may desire to make a hobby of it as a means of getting into power and place. If the miners were let alone by the politicians, does anybody believe that the taxation of mining property, as other property is taxed, would make any difference in the amount of mining? I certainly do not believe it.

Now, it is proposed that we shall not tax any mine which has a value of under five dollars

per foot. As a practical matter, I do not care a copper for that, and I complain of it only as an abandonment of the sound political principle, that all property shall be taxed alike. And it is an abandonment of moral principle, too, because it is unjustly taking from one class all the burdens which should be borne by that class in fair proportion, and placing them upon another class. Still, as a practical matter, it is very trivial. The taxation of mines worth less than five dollars per foot, does not amount to anything, and therefore, I say, it seems to me that gentlemen should not ask us, who think it is an abandonment of principle, to make that concession for so trifling a benefit as it would bring them. It will save a slight burden upon some of those gentlemen's constituents—those who have invested in cheap mining ground—but when we do that, we abandon the principle of just and equal taxation. Why, sir, it was for just such a slight thing as that, that our revolution was begun and carried on. The American people did not care for the three-pence a pound tax on tea, but they would not abandon the principle of "no taxation without representation." It is just so here. We who believe that upon principle all property should be taxed alike, feel that we should not be asked to abandon that principle, when in doing so, we do not help anybody to any appreciable extent. Now, as a matter of principle, we all start out on the same general ground, that all property is to be taxed alike; for if I understand the argument of gentlemen, it is not as a matter of right, but as a matter of policy, that they argue for its exemption.

Mr. BANKS. That is not my argument.

Mr. DeLONG. It is not mine.

Mr. NOURSE. I understand them to say, that by refraining from taxing the mines, we should encourage them, and so make the State wealthy. I think I state the argument fairly, as it has been presented here. Gentlemen say, if you impose a tax on the mines, you thereby discourage mining, and by not imposing a tax on the mines, you encourage mining—that is what I understand gentlemen to argue—and that thus you increase the wealth of the community. They do not put it upon principle at all, for the ground of principle is, that all property which is protected by the Government, should bear its share in supporting the Government. But these gentlemen say that the mining interest, which is the great interest of the Territory, and upon which the Territory depends almost wholly, should not be taxed. They say that it is not desirable that you should tax that species of property, because, by not taxing it, you encourage the development of the mines, and so add to the wealth of the Territory. They say the mines make all the wealth there is in the Territory, and I admit all that. No gentleman can go beyond my appreciation of the importance of the mines, and the mining interest. I understand perfectly, that the ranches, and the quartz mills, and everything else, would be good for nothing without them. But let us see how this doctrine would work, by referring to other States and communities. The City of Chicago would have been good for nothing without the farming country back of it. Her railroads now reach half a dozen other States, making them all tributary to her wealth and prosperity; but in the first place, I say, but for the farms of Illinois, there would have been no Chicago. Those farms built up her stores, her hotels, her warehouses, and everything there is in Chicago. Yet who ever affirmed, or dreamed of affirming, that these farms in Illinois should be exempt from taxation, because they had made Chicago; or that the buildings, and other property in Chicago, should constitute the whole taxable property in the State of Illinois? So it is if you go into New England. Take the City of Manchester, New Hampshire, for instance, built up entirely by manufactures. That city would be nothing without them. Those manufacturers have employed laborers, as our mines have here, but in much greater numbers. They have paid out immense sums of money, and they have built the town; and yet what manufacturer ever claimed that his property in the manufactory should not be taxed? So much for that argument.

Now, the eloquent gentleman from Virginia (Mr. Chapin) thinks he sees a parallel for the policy which he seeks to establish and pursue, in the fact that Massachusetts does not tax the whales that her whalemen hunt after, or the oil which they are seeking for, until it gets into port. Well, I do not know by what authority Massachusetts could tax the whales in the Pacific Ocean. She might as well undertake to tax real estate in the Sandwich Islands. I do not know by what authority she could tax the oil until it does get into port, because until then, nobody knows that there is any such oil. And the fact, instead of being such an illustration of this policy as the gentleman claims, seems to me only a matter of mere honesty. They do not tax the whales, and the oil, because they have no right to tax it.

But the gentleman from Churchill County, behind me, (Mr. Murdock,) says he is opposed to putting in "mines and mining property," because it is surplusage. He says, when you say "property," that is all that is necessary. Now, there is something more than the mere question of taxation of the mines that arises here, and that is one point to which I wish to call attention in this connection, for it seems to me that that is involved, as much as the taxing of the mines. The amendment offered by the gentleman from Storey (Mr. Toner) is not before the Convention at this time, but the amendment to the amendment, offered by the gentleman from Ormsby (Mr. Johnson) is before the Convention; and that provides for the taxation of not only real and personal property, but also of possessory claims and rights

Now, without such a provision, what is there that can be taxed? There are in this Territory a few ranches, perhaps, that have been surveyed by Government, and are occupied by owners who have the title in fee, and that is all the property to which anybody has a title in fee. All other titles are possessory; and of the fourteen millions of property in Storey County, I think probably four millions are personal property, and probably about ten millions are real estate; and of all that property, scarcely a dollar's worth is owned in fee. It is all possessory property; and if the arguments of some gentlemen be sound, that because of the language of the Enabling Act property of the United States cannot be subjected to taxation, then those houses and stores in Virginia City, partaking of the realty, would escape. They certainly are not personal property. They cannot be taxed as real property, according to that doctrine, because the fee is in the United States, and they cannot be taxed as personal property because they are not personal, but are fixed and annexed to the realty. And if you do not adopt this provision, which includes possessory rights, under the doctrine contended for by the other side of the House you cannot tax that fourteen millions of surface property in Storey County—not a rod of it. You not only throw out all mines and mining property, but all other property, except that to which the title in fee has been granted by the Government. It may be said—I do not know but it is correct—that possessory rights in lands are not taxable, because of a provision in the Enabling Act that it shall not be taxed for five years, but I do not think there is such a provision.

Mr. JOHNSON. There is not.

Mr. NOURSE. Well, I thought there was not. But I say, unless you inclose in your constitutional provision, such language as will make it sure that you can tax possessory rights, it leaves the State Government to be paid for and supported by the owners of the few ranches which have been entered at the United States land office, not amounting altogether to two millions of dollars in value. That is where it would leave us.

Now, the gentleman from Ormsby (Mr. Johnson) puts this matter at rest by his amendment. It suits me exactly. I am not particular about the exact language, however. I do not lay as much stress as he does on the use of that word "claims." I should be willing to have it modified so as to state only that all property, possessions, and possessory rights shall be taxed. A man may have a clear possessory right to a mine, for instance, of which he has been unjustly deprived. I would not object to allowing it to read "property possessions and possessory rights;" and when you get that idea in, I do not care by what particular word or phrase. I am perfectly satisfied.

Now we come to another question, and that is one which has been twisted and turned into every imaginable shape, in this debate. It seems to me that gentlemen are not consistent in regard to it. In one part of their argument they say that the mines pay for everything—that if a man raises a cabbage, the miner pays him for it, and pays all his taxes too—that ultimately, everything comes out of the mines. Then what is the objection to directly taxing the mines. If there are twenty millions, say, of agricultural property, and sixty millions of mining property in the Territory, you have to tax the twenty millions at the rate of one and a half per cent., in order to raise three hundred thousand dollars, or two per cent., making the allowance necessary for the cost of collection, and for the non-collections; and there would be four hundred thousand dollars for the miners to pay, if they have to pay it all, according to this argument. Now, are they any worse off if they add their property to the assessment, and make it eighty millions of dollars, paying taxes at the rate of one half of one per cent. on that, instead of two per cent. on the twenty millions? What is the difference? I do not know why it is objected to, unless there is some "gum-game" about it—unless men are to have wool pulled over their eyes—unless gentlemen wish to be enabled to go back to their mining constituencies and say: "We got you clear from taxation!" when they really did no such thing. If they admit that the miners have got to pay the taxes in the end, I do not see but that the miners may as well nominally pay their share of taxation, as to pay it really, and get no credit for it. No more money is necessary to be raised whether the tax is levied on twenty millions or on eighty millions.

But there is another feature of this case, which has not been brought out quite as boldly as it ought to be. It is not merely a State matter, but a county matter also. And here let me say that, elected as I am by the people of Washoe County as their representative, I do not believe that I am bound to vote simply for their particular interests, regardless of what may be right. I do not believe they ever expected that of me; and if they did, they are wofully mistaken in their man, that is all. Now, we are legislating for county expenses, as well as for State expenses, and I take an interest not only in Washoe, but also in Storey County. The representation on this floor from the latter county has so prepossessed me in its favor, that I cannot help it. [Merriment.] I do not want to see the people of Storey County dealt unjustly by. Why, the assessor of Storey County tells us here, that he has assessed four millions of personal property in that county, owned as mines are owned. It was not assessed as real property, nor as possessions, but only as gross proceeds. Of course, the stocks held by individuals must have been assessed also, if the assessor did his duty, as the presumption of law is he did, and we must presume that if any gentleman in Virginia City had stock in their safes, they were assessed for it. That would

be personal property, and therefore liable to assessment; and of course no Virginia gentleman would swear falsely when put on his oath. That property, then, must be estimated with the other property in Storey County, and it is variously estimated from six to eight millions of dollars. We will put it at the lowest figure, for our calculation. All the interest which the Storey County people have in the mines, must be included with the personal property of the county, which would take in, therefore, all the stocks, the dry goods, the groceries, horses, carriages—everything in the way of personal property. Suppose that half of that amount of personal property is in stocks; then we see that a very large proportion of the personal property owned by the Storey County people does not pay a cent towards the expenses of Storey County, and yet, as has been said repeatedly here, the time of the District Court is taken up by those large mining cases, in respect to ledges owned by men living abroad—non-residents in the Territory. They are protected there by law, at the expense of the people of Virginia. And most of the time of Judge Davenport, the City Recorder, is taken up, I believe, in investigating those "smoking-out" cases, and bringing in men for assault and battery in connection with them.

Mr. DeLONG. Let me correct the gentleman. That is a mistake; the reports show that the Recorder's time is mostly taken up with the cases of gentlemen from the country, who have come into the city to get drunk. [Laughter.]

Mr. NOURSE. Well, we know the papers always tell the truth, and the papers show that those "smoking-out" scrapes are what chiefly occupy his time; the rest of it is taken up with cases of assault and battery. They are about all under-ground cases of a similar nature. Gentlemen will admit, I suppose, that these cases take up much of the time of the court.

Mr. EARL. But the Recorder's Court is a self-sustaining court; and not only that, but it pays a considerable amount into the county treasury.

Mr. NOURSE. So much the better for the county treasury. Any other information from Storey County will be gratefully received and noted. [Laughter.]

As I was about to say when I was interrupted, these stockholders in the mines, are not paying anything towards the expenses of the county of Storey. They are getting rich from it, I think, notwithstanding the fearful stories we have heard about the non-productiveness of the mines. They are certainly getting dividends, month after month; they are enjoying the protection of the courts, and they are paying nothing whatever towards the county expenses, except it may be what they may pay in the way of fines when they get into that condition which the gentleman from Storey (Mr. DeLong) has suggested, and that would certainly not amount to a very large sum in the aggregate. Now I protest against the injustice of that arrangement. It is not a question between the mining counties and the cow counties, but it is a question between the poor, honest miner, who digs with his pick in the mines, and those rich stockholders and shareholders—those wealthy men. I say they should be made to pay for the protection they receive.

Now I wish to pay my respects for a moment to this talk about the Constitution being rejected. I did not want to say anything about that, but when they tell us about the miners coming down forty-horse power against the Constitution because they are not exempted from taxation, if it were any where else than here, I should say it sounds like bosh. I want to know who are the voters of Storey County? Are the only voters there to be those who are to pay the heavy taxes, if the Constitution is adopted? I take it the working-men constitute a majority of the voters in Storey County, and will they have to pay a cent of this tax on the mines? Is it not simply the owner, and not the working-man, who will be taxed? And the owner will not pay his workmen one cent less wages on that account. The standard of labor is not regulated by that. The Gould & Curry Company is not going to work to figure the matter up, and cut down their operatives' wages so much per man, in order to meet this tax. It will not make a difference of a single cent with the working-man. I do not know how much the voters of Storey County may be misled by demagogues, who would make them believe they are wronged by this policy; but if the case is fairly presented to them, does any gentleman believe that a majority of the people in Storey County is going to be led to vote against this Constitution because under it the wealthy men who have property there will have to pay taxes on that property?

All this argument about not taxing the mines because we want to encourage their development, is nonsense. The argument is, that you must not tax any man who is trying to make money, for fear he will stop making it. If an eastern manufacturer goes into a factory and makes money there, he does it for himself, for his own benefit, and not *pro bono publico*. And the miners in this Territory, with all due respect, go into that business also for themselves. Do people in the East, when the manufacturer, who is undoubtedly benefiting the community, begins to make money for himself, stand and hold their breath, and say: "Do not tax him, or he will stop his work"? Let these miners make money for themselves if they please, but are they to be exempted from taxation merely because, while making themselves rich, they happen to make others rich also, or to advance the general interests of the community? The argument would be good and sound if it were proposed to levy an extra tax If, under a system such as the United States Government has adopted, of taxing incomes, and so on, we proposed to add to the property

tax another tax upon the proceeds of the mines, then gentlemen might with justice come in and say: "This is a wretched policy; you are certainly discouraging this interest which is helping to build us up." But when it is simply proposed to treat this kind of property as we do every other kind of property, there can be no soundness in the argument, that in so doing we are discouraging the progress of the miners with their work.

I have but a word more to offer. The sum of the whole matter, Mr. Chairman, is, that the amendment proposed by the gentleman from Ormsby (Mr. Johnson) carefully includes all kinds of property, and the reason why the words "all possessory claims" are put in, is because of gentlemen like the gentleman on my right, (Mr. DeLong,) and others, having claimed that the possessory rights to those mines are not property, and that if that word "property" alone is used, they will not be subject to taxation under it. And that practically it might be a matter which would be likely to give trouble, without those words, is abundantly evidenced by the fact, that, under a similar provision adopted in the California Constitution, the mines have gone untaxed from that day to this. Although they have plenty of mines like ours, yet none, even of their quartz leads, are taxed. Now this amendment of the gentleman from Ormsby simply proposes to cover all sorts of property. It says: "property, possessory rights, and claims."

Some of the gentlemen on the other side come in here and ask that the mines be exempted from taxation altogether; but others, more reasonable in their demands, say they do not ask that. They say: "We are willing that the heavy mines shall be taxed, but we do ask you to exempt those which have a value under five dollars a foot." In regard to that, as I said before, although practically it is so small a matter that I do not care for it, yet it is a matter of principle, and would be of little practical benefit to anybody. If we are beaten in the matter of principle in the abstract, I should not object seriously to that, in the concrete. But why should not we add to that, that a claim to land out here in the sage-brush, worth not more than five dollars per acre, shall be exempted also from taxation? A man plows his little ditch around his land, after he clears off the sage-brush, plants his patch, and expects to make something by his cultivation; and if we should give him an inducement not to enter his land in the United States Land Office, and purchase it from the government, I do not know but we should be all the wealthier for keeping the money in the Territory. And why is it not just as reasonable that farming property shall be exempted so long as it has but little value, as that mining property should be, as long as that has but little value? I do not know how it would look to me on further deliberation, but it seems to me now that if it is only desired to levy taxes on property, I might be willing to incorporate a provision here that a given amount of property, of any and every kind, shall be exempted from taxation. I think possibly that might do. Then, if we exempt, say five hundred dollars, the man who has a hundred feet at five dollars a foot, in a mining claim, would be exempt. But on principle we cannot exempt one kind of property, unless we do another. I do not think I would object to making an exemption of a small amount of property, for if a man is poor he nevertheless pays his poll-taxes. It does not strike me now as being objectionable, but it does strike me that to exempt a small amount of a certain kind of property, and not of another kind, would be as objectionable, on principle, as it would be to exempt one kind of property entirely. My great hope is that this Constitution, in this respect as well as every other, will be founded on the broad principles of right and justice and equity, with just as little reference to how others may view our action as we can possibly feel justified in getting along with. I certainly think—I have just as much confidence in the people as that—that our chances with the people for the adoption of the Constitution, and I say it in all seriousness, will be far better if we make it right, if we make it just, if we make it equal in its bearing upon all interests, than if we do not. I think there will be a better chance, by far, if we do that, than there will be if we attempt to pander to the interests or the prejudices of any particular class. I do believe that the miners are not so selfish as their defenders on this floor would have us believe they are. I do believe that the miners, as a general rule, would not object, if you present the question nakedly: "Are you willing to pay taxes upon the cash value of your mines—not what a man may say he will give you, knowing that you would not sell for any price, but upon its market value—just as a horse is assessed which the owner would not sell perhaps for three times its value?" I think that the miners will be found just as willing as other men are to bear their share of the burdens, when the matter is fairly presented to them. They are willing to pay their just proportion, and no more, of taxes on their mining property.

Mr. DeLONG. I wish to say a word in reply to the gentleman who spoke last, though I had not intended to say anything more on this subject. That gentleman, it seems to me, has reserved his sarcasms and his misrepresentations of the argument on our side to the close of the discussion, just before the vote is to be taken, and I do not feel, for one, that it is my duty, or my right, to allow the question to come to a vote now, misrepresented as I have undoubtedly been, by the remarks of the gentleman, without some reply. The gentleman from Washoe is exceedingly caustic in his argument. He is a good pleader, presenting his views in a reasonable and plausible manner.

Mr. NOURSE (in his seat.) Thank you.

Mr. DuLONG (proceeding.) But for some reason his judgment fails to perceive the point which we strenuously urge, or for some reason he is unwilling to present our arguments in their true light. Now it is not our argument that the individual who works in the Gould & Curry mine, or any other mine, or the man who owns its stock, will be injured by taxing the mines, and our that account he induced to vote against the Constitution, so as to avoid that taxation, because it is reasonable, as the gentleman argues, that if a man owns no property he has no right to pay on property. That is not what the poor miners object to. Their objection is this: The mines are developed by a certain system. That system is, first, incorporation. In the first place, there is the formation of a company, and then that company is incorporated. The next step is, that the company levies assessments upon the individual members, and those members are induced to pay their assessments by the hope held out to them of the discovery of a remunerative mine. And those men find, as we have all found, to our bitter sorrow, who have engaged in the business, that in nine cases out of ten the enterprise fails to pay. And from day to day and week to week, as time rolls over this people and the land, we find it harder and harder to induce non-residents, or even resident share-holders, to pay their assessments on stock in the undeveloped mines. Add to that burden the burden of taxation, and many men still paying their money to develop the mines, still paying the reward of the laborer, who is worthy of his hire, will be induced to quit the business, and thus the field of labor will be contracted. There is where the objection of the poor man comes in. It is not the tax in itself, but its tendency to check the speculative feeling of the people, and make them less willing to adventure their money in this kind of enterprises, than they would be if we were to foster and encourage them.

Mr. FITCH. Will my colleague permit me to ask him a question? Suppose the most desperate case that could be imagined, of a man prospecting for a mere hope. Suppose a man were working upon a ledge, running a tunnel, or sinking a shaft, with no signs whatever of its ever turning out to be of any value: do you suppose that in such a case, if a man were willing to expend a hundred thousand dollars in running his tunnel, or sinking his shaft, he would be deterred because there was to be a five-dollar tax imposed upon the mine, after the tunnel was run or the shaft was down?

Mr. DuLONG. I understand all that, and I am going to deal in facts. Now in nine cases out of ten, men engage in prospecting not so much with the hope or expectation of being so fortunate as to discover a valuable mine, which will make their fortunes immediately, as with the hope of establishing the fact that a mine exists. If they can obtain such evidence of the existence of a mine as to cause their claim to be marketable, or valuable, they have obtained what they sought, and immediately their stock goes into the market. They sell some of it, holding on to the rest, and that is the way the business goes on. Now if you tax such a mine upon its market value, if you let the idea go out among the men who buy and sell stocks in these "wild-cat" claims—who deal in the thousands of mining claims which are bolstered up in that way, by men who are willing to take their chances—if you give out that all these mining claims in the market have got to pay taxes according to their market value, I tell you that nine out of ten of the men now engaged in the business will quit developing the mines. The man who now frequently invests a few spare dollars in "wild-cat" stocks, will quit dabbling in them.

And speaking of "wild-cat" mines—why, sir, every mine in this Territory was a "wild-cat," in the outset. The Gould & Curry was a "wild-cat" claim, and the Ophir, too. It is only by "wild-cat" that the country has been developed at all. Now the gentleman from Washoe (Mr. Nourse) tries to throw a sarcasm upon the argument in relation to the non-productiveness of the mines. He asks, if they do not produce anything, how is the country to become great?

Mr. STURTEVANT. Did I understand the gentleman from Storey to say that the Ophir mine was a "wild-cat" claim?

Mr. DuLONG. The Ophir mine was in the first place only surface diggings. It had a surface ledge, and when it was first discovered men did not think it was good for anything, and therefore it was "wild-cat." That was the first discovery of the famous Comstock lead. Around the location, on the immediate surface, the decomposed rock and earth had got mixed with silver and gold. They found at length a little of the decomposed quartz, which was rich in gold and silver, and that was the beginning of the discovery of what is now so famous as the Comstock lead.

My colleague (Mr. Tower) spoke the truth when he said that the mines, with a few exceptions, did not pay. The gentleman from Washoe (Mr. Nourse) asks, if that is the case, why we should not force the miner in, and keep men out of them. Had the gentleman lived in California as long as I have,—had he lived in a mining country, and learned the history of a mining community,—he would have learned an important fact. He would have learned this in California: that although that State has had the richest placer mines ever known in the history of the world, yet from her earliest history down to the present day the poorest class of men in California has been the miners. Notwithstanding the fostering care which the State has thrown around them, by never taxing them, and by allowing them the largest liberty of making their own rules and regulations, the miners of California have been and are now the poorest class of men within the borders of the State. And they will so continue to be, as long as Califor-

nia continues to be a mining country. Notwithstanding, sir, that the vast wealth acquired by the labors of the miners has poured in a constant stream out of that State, to enrich the world, a stream that has reached and gladdened the hearth-stone of perhaps every man in the United States of America, to a greater or less extent, and has expanded beyond our own land, spreading a rich tribute over all the fields and in all the cities of Europe; notwithstanding that every month has seen one, and often two, steamers sailing from San Francisco, from the year 1850 until now in 1864, laden with from one million to two millions of dollars in the precious metals, the results of the labors of this class of men, still they have themselves remained poor men; while the farmer, the manufacturer, the merchant, and men in every branch of trade have grown rich. Other men are now living in their fine houses along the coasts, on the banks of the rivers, and in the valleys of that State, while the miners are still delving and toiling. That is the history of every mining community, and that is the history of our community here, like the rest. It is true that in our community, individuals have made rapid fortunes by investing in the mines, and selling; but what man has ever made his fortune by buying and retaining mining stocks, except perhaps in a few of the dividend-paying mines? But the difficulty is in the cost of producing results. Why, sir, the Chollar mine has taken from its share-holders, from its organization down to the present time, forty-eight dollars a foot in assessments, and what has become of the money? The gentleman from Washoe (Mr. Nourse) complains here of the capitalists of San Francisco, and of California, and the capitalists abroad, who do nothing, he says, to build up the Territory. But who paid that forty-eight dollars a foot to develop the Chollar mine? The share-holders are principally residents of California. What has become of that money of theirs? It has been paid out to the operatives here. It has been paid to the farmer for the products he has taken to the city of Virginia, to feed the laboring men working in the Chollar mine. It has been paid to the mill-owners for crushing quartz; it has been paid to the teamster for hauling lumber; it has been paid to the laboring-man and the mechanic; it has been paid for improving the streets, and for erecting buildings. That money has been dispersed throughout the community, and although the mine has never paid a dollar, and has cost its owners forty-eight dollars a foot, yet it has enriched and gladdened the people and built up the community. And that is the history of nearly every non-paying mine. Notwithstanding that they are non-paying, and a heavy burden to their owners, yet they are the basis of the prosperity of our cities and the wealth of our people. That is our answer to the complaint in regard to foreign capitalists.

Now these gentlemen in their arguments have entirely failed to meet one or two propositions, which were expressed in a plain and sensible manner by the gentleman from Churchill (Mr. Mardock.) They have not met the proposition advanced by me, and reiterated by him, that a mine is not property until it is discovered, and developed, and brought into existence as a remunerative mine. The gentleman who was last on the floor, (Mr. Nourse,) attempted to perpetrate some wit at the expense of my colleague (Mr. Chapin,) because of the comparison in regard to whalemen, but I insist that that comparison is a correct and, true one, and that it places this matter in a proper light. When the whaler leaves the dock, there is no doubt or question but that if you will, you may tax the rigging, and the ship, and the entire outfit, and the owners must pay it; but if you were to impose a tax upon the whaleman for the oil, because he has got a right to go and catch a whale if he can find it, men would say your action was stupid and foolish. So here a man starts a tunnel or a shaft, hundreds of feet from where the mine is supposed to be, and he is willing to pay a tax on all the outfit he has, and after he has found a ledge there, if he ever can find it, he is willing to pay a tax on what he finds, as the whaleman is willing to be taxed after he has found a whale. But the whaleman would not be willing to be taxed for the whales which he may not find in the ocean, and the miner is not willing to be taxed for the ledge which may not exist. If it is there he will find it, and as soon as he can find the ledge, and take the precious metals from it, he is willing to be taxed on what he has found. I say he should not be taxed until then, any more than the whale and the oil are taxed until the whale is caught, and the oil introduced, and made property among men, that can be rendered available—that can be seen and used. But if the views of the gentleman from Washoe, more wise than all the rest of us, are correct, and we are incorrect, if indeed mines are property, then I say the gentleman has not met that proposition laid down by the gentleman from Churchill, in a plain but unanswerable manner, when he asks if they are property, then why should we employ any language in regard to them, in this fundamental law, more than to say that all property, both real and personal, shall be taxed in this State.

Mr. JOHNSON. Will the gentleman permit me to make a suggestion here, as it embraces a proposition contained in my amendment? It is simply this, that this species of property is one which we are prohibited from taxing by the Enabling Act. We are prohibited from taxing it as property, because the fee is in the United States; but we are not prohibited if we provide for the taxation of possessory rights.

Mr. DeLONG. I do not understand the Enabling Act to require such action. That Enabling Act, if it permits us to tax the mines at all, permits us to tax them as property, and not by any other name. We are prohibited from

ing the Government property, that is all. On the other hand, if you are prohibited from taxing the lands of the government by that Enabling Act, and those lands still remain the lands of the government, how could any language be put into the Constitution by which you could tax it in another way?

Mr. JOHNSON. We have the right to tax the possessory claim of the individual.

Mr. DELONG. To tax the possessory claim of the individual? Well, I think I have heard the eloquent gentleman from Ormsby (Mr. Mason) argue, and I think I heard it argued, too, by the gentleman from Washoe, (Mr. Lewis,) that a possessory right is property. If so, it is covered by the original proposition, in this provision—that all property shall be taxed.

Mr. JOHNSON. No, Sir. The Organic Act says that all property of the government shall be exempt from taxation, and this amendment is to avoid the legal proposition involved in that language, and to render certain and distinct the language of our Constitution. We say that the possessory right or claim shall be taxed, and we say that, in order to prevent any quibble as to what we mean.

Mr. DELONG. Is a possessory claim property?

Mr. JOHNSON. It may be declared so, unless there be something inhibitory to prevent it. The Constitution of the State, or the law of the State, for certain purposes, may declare the possessory claim to be property—it may be so declared by the Legislature—but if the question involves a construction of the Enabling Act, and if the Enabling Act shall be construed as inhibiting it, unless it be specified in the Constitution itself that possessory claims shall be property, such claims cannot be taxed as property. We therefore propose to put such words into our Constitutional provision as shall define what we mean; that the right of the individual to the property of the United States—the possessory claim, or the right to hold and use such property—shall be taxed.

Mr. MASON. Does the Enabling Act inhibit the people of the State, or the Legislature of the State, from taxing its own people, or only from taxing the United States?

Mr. JOHNSON. I do not think it inhibits us either from taxing the people of the State, or the people of the United States, which is the same thing; nor that it inhibits us from taxing the property held by them. On the contrary, it provides that all property shall be taxed equally. And as to persons, we propose to authorize the Legislature to impose a personal, or poll-tax of four dollars a head.

Mr. MASON. But does it forbid the taxation of the property of the United States, though it may be held as property by the people of the United States?

Mr. JOHNSON. I take the position that we are not inhibited from taxing the property of the people of the United States, but the property owned by the United States cannot be taxed—that is, the property of the United States Government in the Territory of Nevada. The Enabling Act says that the property of the United States—not the property of the people of the United States, as individuals, but the property of the United States—shall not be taxed.

Mr. DELONG. The gentleman's explanation has reduced his side of the question to such a clear proposition that I can only say, to me it is as clear as mud.

Mr. JOHNSON. No doubt.

Mr. DELONG. He starts out by saying that this property, known as mining property, which he is so desirous of reaching, is property belonging to the United States. He says that the Enabling Act, under which we are framing our Constitution, prohibits us from taxing any property of the United States within our borders. Then, I ask him, where he gets the right to tax this property, and he says—"I want to tax the possessory claim to the property." Then I ask him, "What is that possessory claim? Is it property?" And he replies, "Yes, it is." Then I want to know, when the Constitution says all property, real and personal, shall be taxed equally, why that does not cover the whole ground, and he says it does not cover the whole ground. That is a proposition which I cannot see through.

Mr. JOHNSON. Did not the gentleman admit to-day, that according to this Enabling Act, under the proposition offered by his colleague, (Mr. Tozer), this species of property could not be taxed?

Mr. DELONG. Yes, sir.

Mr. JOHNSON. Very well; that is enough.

Mr. DELONG. Then my explanation comes in that, after all, you cannot tax it unless it is property. Even with the words "possessory rights" included you cannot tax it.

Mr. JOHNSON. Then why does the gentleman object to the use of those words?

Mr. DELONG. I object, first, because that clause being in the Constitution makes it objectionable to the people, who do not all view it as I do; and secondly, I object to allowing the Legislature, proceeding under that mining clause, to tax that property, until we can go and have our views passed upon by the judiciary, which will require a year or more, and during all that time men, both here and abroad, would be discouraged on account of the idea that there is to be an onerous taxation of the mines. That would bear very heavily on the top of the heavy assessments which are made upon the shareholders. Those are my reasons. It is now a very late hour in the evening, and I have not time to travel over the whole ground, but I do insist upon this, that the mines are the property of the United States Government within our limits, and as such we have no right to tax them, because the Enabling Act says we shall not tax the property of the United States within our limits. Then on the other hand, if the gentleman from Ormsby asserts that a mining claim is property, I say

that the language already used covers it, and it is not necessary to say any thing more. If it is not property then you have no right to tax it, and you ought not to put the clause in. These are my propositions, and I insist that they are correct; and I insist further that there is no good or valid objection in the world to the amendment of my colleague (Mr. Tweer) to strike out the words "including mines and mining property," except on this hypothesis.

My friend from Churchill (Mr. Murdock) laid down a proposition which I think is unanswerable, namely: Why in the world should you engraft into the Constitution a requirement which within twelve months time every man in the community may become convinced is unwise; and yet, if you have put into your fundamental law, you cannot alter it as you could a mere act of the Legislature? If you put such a requirement in here, it is put in for all time, for it would require the lapse of years, and the cooperation of successive Legislatures, as well as of the people, to amend your Constitution so as to remove the provision, if it be found to operate badly. The gentleman from Churchill asks, why not leave this matter to the next Legislature; that Legislature which is to assemble under this Constitution, and which will be authorized and required to assess all the property that is to be assessed? Why are you not willing to do that? The only answer is, the supposition that the Legislature will be recreant to duty—that it will not do what you say is its bounden duty to do? Are we to presume that those who come here after us, to frame laws under the Constitution we are now making, are going to be unwise or dishonest? If so, let us do all the legislation that is necessary to be done in this Constitution, and then we need not have any Legislature. But if we have faith in them, if we think that wisdom will not die out with us, but that others will live hereafter who will know as much as we do, that there will be others fit to be legislators, possessing as much wisdom and as much honesty as we possess, let us leave them power to do something, and not incorporate it all into our Constitution, and thus tie their hands together.

Now I say that this proposition of the gentleman from Churchill has not been answered by any gentleman on this "cabbage-plat" side of the question. They insist that we must put in here that objectionable language, so as to aim a direct blow at the mining interest. It looks like a studied insult to those who represent that interest here. They do not say that the stock of the merchant shall be taxed, or that a man's house shall be taxed, or that a man's farm shall be taxed, but they say all these are included in the term property. They argue with one breath that the mine is property, and in the next breath tell us that the words "all property, real and personal," do not include a mine. If there is any consistency in that I fail to see it. It is either property or it is not property. If it is not property, you have not a right to tax it; and if it is property, and you take it in when you say that all property, both real and personal, shall be taxed. By what language you get all the property in the State. For, can the gentleman from Washoe (Mr. Nourse) tell me, after reading all the legal commentators who have ever written on the subject of any kind of property which is not real, nor personal?

Mr. NOURSE. I will tell the gentleman a term for that kind of property which is neither real nor personal; it is "chattel-real."

Mr. DeLONG. But what constitutes a chattel-real? Blackstone includes it under the head of real property; it is one branch of real property. You may have a mountain of granite, for example, and that is real estate; but anything less than absolute ownership of that may be a chattel-real. If it is only a contingent interest in that mountain of granite——

Mr. BROSNAN. A lease, for instance; what would you call that?

Mr. DeLONG. Is not that realty? If not, it is personality, because all property is of two kinds, real or personal, and the plainest definition of the dividing line between the two kinds is, that real property is all kinds of property which in its nature is fixed and immovable. All property which is movable, which the owner can transport with him, or which can be led or driven away, is personal property. The division is simply between that which is movable and that which is immovable.

Mr. NOURSE. There is the term for years; is that moveable property?

Mr. DeLONG. It is immovable property, and therefore real property, because it is an interest in that property which is immovable. It is a chattel-real, but that is only one branch of real property; that is all it is. Can the gentleman pretend to deny that? And now I ask the gentleman this question: Your Constitution says "All property, both real and personal, shall be taxed, including mines and mining property." Now if that does not include all kinds of property, why do you not also say "chattels real?"

Mr. NOURSE. I did not frame the provision, and I support the proposition of the gentleman from Ormsby (Mr. Johnson,) because it meets that very difficulty. It provides for the taxation of that property, which, like a lease for a term of years, is neither the one nor the other—neither personalty nor realty—and it is so laid down by all the writers, Blackstone included. The gentleman from Storey (Mr. DeLong) lays much stress upon the word "real." He says that is real property, which is in fact neither real property nor personal property. Suppose a piece of land to which I have the right of possession for a term of years, under a lease, belongs to the gentleman from Storey—that is real property owned by him, but the lease for several years which I may have is a chattel-real. Now my right to that land is just the

...as the right of possession to a quartz ...e. It is neither real property nor personal ...erty. It is not personal property, because ...cannot transport it with me; it is not real ...perty, because the United States owns the ... It is mixed property; it is a chattel-real; ... a description of property which was not ...scribed in the old Constitution, and I want ...o have it described in this Constitution which ...we are framing.

Mr. DuLONG. Then how singular it is that ...ry State in the Union, including the State of ...California, and the United States Government ...itself, and even the proposed State of Nevada, ...according to the Constitution adopted by the ...convention of last year, has deemed it sufficient ...to provide that "all property, both real and per...sonal," shall be taxed! How strange it is that ...the State governments of all the States in the ...Union have proceeded through years past to ...levy a tax, and to collect it, upon all property, ...under a Constitutional provision, reciting only ...that all property, both real and personal, should ...be taxed! How singular it is that men who ...owned these interests, which the gentleman calls chattels real, have submitted to be taxed ...under such a Constitutional provision, and that ...the framers of this document, which constitutes ...the basis of our action, should have thought ...they could reach, with the terms "real and ...personal property," every kind and description ...of property, except the mines, and then put ...them in as the last thing that could be thought ...of or guessed at, that by any possible means, ...or by any conceivable dodge, could escape ...taxation, under this clause. We know that ...other States have had the same kinds of property that we have. We know they have the ...same interests in California. And yet, it is left ...for us, in this debate, to make this great discovery. And even here, until this evening no ...man has raised the question that every lease is ...not subject to taxation as real estate. Being ...an interest in real property it amounts to a ...realty. I do not propose to carry the argument ...further on this proposition. It is evident that ...the only idea with the gentleman who introduced this amendment, and certainly the only idea advanced, either by him or by the gentleman from Washoe—although the latter gentleman has made three arguments on the subject—the only reason given by the supporters of this amendment, why it should pass, until this moment, has been that it was necessary to catch the mines. It was never before intimated that in this country there existed a species of property called "chattels-real," which such a Constitutional provision would not reach. It is the first time that that argument has been advanced in favor of the passage of this amendment. I leave the Convention to judge how much strength there is in the assumption which the gentleman from Washoe makes, in order to escape from the argument of the gentleman from Churchill—the argument that, if the mines really are property, then if we sustain the amendment of my colleague (Mr. Tozer) we take that property in, and the balance of the section is altogether superfluous. Now that proposition is here, and cannot be escaped from. But if the gentleman does think there is some species of property known as chattels real, or some species of property known as mixed property, which is property partaking of both personality and realty, and which is not reached by the language as it stands, then we will be willing to say, after striking out the words "mines and mining property," that you may insert "chattels real and mixed." You shall have an opportunity to cover that whole objection, if that is what you are trying to reach by the substitute offered by the gentleman from Ormsby (Mr. Johnson). I will even consent to have it read, after striking out "mines and mining property," "all real, personal and mixed property, and chattels real, shall be subject to taxation;" and if that covers all kinds of property you have got the mines in, if they are property, without the further amendment which you wish to make, and which looks to me like an invidious distinction, and an insult to the people we represent and the interests which we are standing here to defend.

Now the gentleman says it is easy enough for us to protect ourselves—that if the State has not the right to tax the mines the amendment will do no harm, because we can go to the Supreme Court and upset the whole thing. That is all very fine, of course; but I say this, that if it is right that the mines should be taxed as property, then unless you do tax them you cannot tax any other property. If the Legislature acts as infamously as you seem to think it will, then if the mines are property, and you put in a provision here that all property, all mixed property, and also all chattels-real, shall be subject to equal appraisement and taxation—if you put that in, and the Legislature that meets next year fails to do its duty, and does not provide that mining claims shall be taxed, then you can come to the Supreme Court and say—"May it please the Court, my client is a farmer; the Legislature has failed to do its whole duty; it has taxed my client's farm, and let the mines go free." And the Supreme Court will say that that is unconstitutional, for they must find, according to the gentleman's argument, that the mines are property, and inasmuch as all property must be taxed equally, therefore the mines should have been taxed, as well as your client's farm.

Mr. NOURSE. But that would not set aside the whole tax for that year. In that way you compel us to set aside the tax levy of the whole State, for an entire year, for the purpose of getting this question settled; whereas, if it is left for you to bring the question before the Court, the only effect upon you is to relieve you from taxation, while the decision would leave the balance of the assessment to stand.

Mr. DuLONG. I beg the gentleman's pardon; the whole assessment must stand or fall

as an entirety, before the Supreme Court. The whole assessment is either constitutional or unconstitutional. If that is the point urged before the Supreme Court, and it is decided unconstitutional for any reason, then the whole assessment for the whole State falls.

Mr. JOHNSON. No, no!

Mr. DeLONG. Well, sir, I think so, certainly. The Legislature, we will say, have passed a Revenue Act, in which it is provided that all property within the limits of the State of Nevada shall be assessed at such a valuation, and that a tax of so much per cent. shall be levied upon it. Then they say that among the property so assessed, upon which that tax shall be levied, shall be included mines and mining property. Very well; the Assessor proceeds, in pursuance of his duty, to assess the mining claims; the miner refuses to pay the tax, and commences his suit, or resists the collection of the tax and the case is carried up, and decided by the Supreme Court. Now what do they decide? They decide not merely that the miner cannot be taxed, if that is the result of the litigation, but that the tax itself as a whole is unconstitutional, because it covers what you have no right to touch and could not tax—because it is assessed upon that which is not within the province of the Legislature to assess. It matters not who takes the question to the Supreme Court—whether it be the miner or the farmer. If the law is allowed to stand in part, it stands as a whole; or if it is made to fall in part, it falls as a whole. The decision must operate the same, and it makes no difference whether the farmer or the miner goes to the Supreme Court, for in either event the result must be the same. It does not destroy the effect of the law, if the farmer goes to the Supreme Court because the mines are not included, any more than it destroys the effect of the law if the miner goes there because the mines are included; it does not make a particle of difference. I insist that the decision, if the farmer should take the case up, would be quite as effectual and binding a decision as if the miner should take it up. In either case the decision would go to the entirety of the matter, and it would not stop with the effect of the law on the particular property in question, for that would leave a Revenue Act unjustly taxing other species of property, and it would, for the best of reasons in the world, have to be adjudged void as to other property. Otherwise it would leave property to be taxed without discrimination, and without regard to the amount which should be levied on other species of property, such as teams, farms and houses; and the Court would be bound to hold the whole statute to be either good or bad. If there has ever been any other decision I have not seen nor read it, and I do not know of it, although I may be in error in respect to that.

I say at all events that it is improper for us to name one species of property particularly, and then say that all other property shall be taxed. It is just as improper to designate mines and mining property in that way, as it would be to designate farming property only. We ought to say that all property shall be taxed alike, and when we have said that then we should leave it to the Courts to determine what is property—not only what is the property of my constituents, but also what is the property of yours. I do not care about following all the make-weight arguments of gentlemen who have come up here, and in the face of figures which they do not meet, and which they cannot dispute, assert that we are asking for a State Government under a Constitution by which our constituents will escape taxation. The gentlemen from Ormsby (Mr. Johnson) says the mining community now fails to pay its fair share of the expenses; but that is not the case, and the figures show that the mining community does pay its full proportion. Out of twenty-five millions of dollars of assessable property in this Territory the miners now pay taxes on twenty-one millions. It is twenty-one millions of dollars against four millions of dollars. We only ask not to be discriminated against unjustly or unfairly.

Mr. JOHNSON. The difficulty is this: We do not say that you do not pay taxes on more property than we do, but that you desire to escape payment on a part of what you have. You pay on more property than we, because you have more, but you are not willing to pay on all you possess, whilst you insist that we must pay on all we have. Now if these words in my amendment do not cover all the property we own or hold, then I suggest that you supply the words that will. But at the same time we ask that the language shall be so framed as to embrace all the property you have, whether it be twenty-five millions or fifty millions.

Mr. DeLONG. All the gentleman has said does not affect the proposition. We are not trying to avoid any tax which we now pay, and we are now paying taxes on twenty-one millions, while you are paying only on four millions. But you desire, if we go into a State Government, to increase our assessable property fourfold, while yours is not to be increased at all. You say to the community which pays taxes upon twenty-one millions of dollars, "You trouble the government more than we do for your protection; you go to the Courts more than we do, and you ought to increase your taxation." Our reply is, that we do not go into the Courts any more than we need to go there, and you have just as good a right to go there as we have. We do not desire to go into Court if we can get along without it. No man enjoys litigation for its own sake. We are troubled in regard to litigation it is true, but we are not asking for a State Government any more than you are. Who petitions Congress for it, or seeks for it? Is it the mining communities that are petitioning Congress? Have they ever asked Congress to pass an Enabling Act for the formation of a State Constitution? No, sir. It is

the Federal Government itself which proposes it. Congress of its own accord passed that Enabling Act, and said to the people of this Territory, "We need in Congress the services of your representatives. We need members of Congress from other free States. We would like to set before the civilized world an example, and a lesson, and teach the nations of the earth this fact, that while all Europe is clamorous that the experiment of free government is a failure—that the United States of America, which have so long challenged the admiration of the world, is now decaying and toppling to ruin—we are able to show them that, so far from going down to ruin, so far from approaching the sunset of our glory and greatness, new States are actually being added to the Union, in the very midst of a war of rebellion more formidable than any century of time has ever before witnessed." It is not of our asking, but it is at the call of the government that we meet you here as equals. We say, take what we have got and tax it, under the same classification as you tax all other property, and we are willing to assume our share of the burdens, and step as a sister star into the constellation of the nation's glory, supporting as best we may the honors and the dignity of a State. That is our reply. We do not ask you to pay any more than we pay. We speak for twenty-one millions of property, and we say we are willing to be taxed on that—the same kind of property which you have. We ask in fairness and justice that those words which we say are words of pointed insult to the men of this country who own in the mines, shall be stricken from this fundamental law, and the whole matter left to the Legislature which is to be elected hereafter by the people.

Mr. GIBSON. I move that the committee rise.

Mr. FITCH. I suppose that the debate on this subject is nearly exhausted. I think we might take a vote now, and report the article back to the Convention in Committee of the Whole. If it is left as an open question for another day, it may consume an indefinite amount of time in further discussion.

Mr. HAWLEY. I hope the gentleman from Ormsby will withdraw his motion.

Mr. GIBSON. Very well, sir, I withdraw it.

Mr. STURTEVANT. There is one matter to which I should like to call the attention of the Convention.

Mr. JOHNSON. I will suggest, with the gentleman's permission, that if the vote be taken now it is not a finality, for I intend to have the ayes and noes on my amendment. There is no necessity, therefore, for taking the vote to-night.

Mr. DeLONG. I agreed to send word to my colleague, (Mr. Toner,) when the vote was to be taken, but I will try to get some one to go for him.

Mr. GIBSON. He has my colleague (Mr. Kinkead) with him, so that it would be a tie anyhow.

Mr. JOHNSON. There is nothing to be gained by taking the vote at this late hour.

Mr. GIBSON. I renew my motion that the committee rise and report progress.

Mr. FITCH. No, no! Let us report it back.

SEVERAL MEMBERS. "Let us have a vote."

The question was taken on Mr. Gibson's motion to rise and report progress, and it was not agreed to.

Mr. STURTEVANT. This question, Mr. Chairman, is not by any means a new question to me. It is something which I have been hearing talked about, more or less, the last four years, or nearly that length of time. The subject has been torn all to pieces in my presence, many and many a time, although it assumes, at present, a little different aspect from any in which I have ever before seen it, in consequence of the provisions of our Enabling Act. But the main question, by all appearances, is about the same thing. Now Congress has, by its act, enabled us to form a State Constitution, and we are here for that purpose. So far as I am concerned, I am here in part to represent the people of Washoe County. I am in no wise afraid but what I can speak just about what they mean. In the first place, that county asks that there shall be a State Government, provided they are not to be taxed to death in order to support it. The people of Washoe County are perfectly willing, if the mining community is willing to join with them, to answer to that appeal from the General Government, which has been so nobly set forth by the gentleman from Storey (Mr. DeLong.) But if the mining community are not willing to keep their end up, I do not think the people of Washoe County are willing to stand the whole burden themselves, nor even to stand their share of it, if you exempt altogether that portion of our property called the mines.

There has been a tremendous hob-bobble kicked up here [laughter] in regard to what constitutes a mine. Now, sir, we have some mines in Washoe County—not of much account, perhaps; but then we say very little about them. Now we also have confidence in the people, and we think they can pick out one man among them, (at least they can in Washoe,) with brains enough to judge of the difference between a hole in the ground and a mine; and I am satisfied that other counties have equally as elegant men, and as capable of judging of that difference. I do not assume the responsibility of saying whether a mine is property or is not. Whether it is or not is a legal question, and that "lets me out." [Laughter.] I am perfectly willing to leave that to the legal fraternity, though, I am happy to say, that I do not hear with their ears, nor see with their eyes. Now this thing of a mine being assessed ought to be a simple matter. It is not to be supposed that the assessor will go around among the mountains, and wherever he finds a man digging a hole, decide at once whether it is a mine or not, and assess it accordingly. He

is supposed, in order to come to some definite conclusion, to have evidence of the facts, and to act in accordance with the oath of office which he takes.

It has also been asserted by my friend from the cow county of Churchill, (Mr. Murdock,) that if it had not been for the industry and perseverance of the prospectors, probably there would never have been any mines here at all. I perfectly agree with that view of it, but I ask who they were who first discovered the Ophir mine? The first mining of any consequence was at Gold Hill. A few days before that discovery, (perhaps gentlemen are not aware of that fact,) I happened to be there—therefore what I say is good evidence. [Laughter.] The notorious Ophir mine, I believe, was first found by Mr. Comstock and Mr. Manuel Penrod, a rancher. Mr. Penrod has owned also quite heavy interests in different mines in the Territory, although I believe that gentleman himself nevertheless favors the idea of the mines helping to support the Government. Now there has been a good deal said here also, very erroneously, I believe, about these "cabbage patches," and the rich men who own the "cabbage patches." My own experience and observation is, that what little they do make, when they make anything by their cabbages, they lay out in the mines, and notwithstanding that, they are willing to be taxed on their mining property as well as on their cabbage property. I think I am safe in saying, too, that there are just as heavy owners of mines in Washoe County as there are in Storey County, and I do not know but more so; and I am pleased to say that they are all perfectly willing to pay taxes on their property. There is one question here—I refer to this idea of sustaining the General Government—which has been very ably and eloquently presented. Gentlemen have sifted the whole thing down to a patriotic idea, but I am sorry to say that they are, in my opinion, less patriotic in the way of helping to support a State Government than they should be.

Now, in my opinion, this whole question stands precisely like this: If you are willing to have a State Government, it is all right, provided you will come and help us to sustain it; if you are not willing to do that, by the way of allowing the mines to be taxed, just say so, and engraft it here into this article, and that effectually kills the instrument. That is my idea of it.

Mr. JOHNSON. I suppose, in conformity with the rules, the first vote will be on the amendment of the gentleman from Storey, (Mr. Tozer.) I will make the point of order that this is the first question.

Mr. DeLONG. I understand the ruling of the Chair to be, that a motion to amend takes preference of a motion to strike out.

Mr. NOURSE. That is, when it is a motion to strike out the whole section.

Mr. DeLONG. The motion to strike out is subordinate to a motion to perfect the language to be stricken out. I submit that a motion to strike out, and add, is perfecting the section, while a motion to strike out, and not to add, is not to perfect but to destroy it. Therefore the question comes first on the motion of the gentleman from Ormsby.

Mr. NOURSE. The gentleman from Storey (Mr. DeLong,) is more nearly correct than is usual for him. The amendment of the gentleman from Storey, (Mr. Tozer,) is a motion to strike out only two or three words. The gentleman would be exactly correct if the motion had been to strike out the whole paragraph.

Mr. DeLONG. If I am not mistaken, the question has been stated a dozen times to-day on the amendment of the gentleman from Ormsby. The first question was on the amendment of my colleague, and upon that the gentleman from Ormsby moved to amend by substituting his amendment.

Mr. WARWICK. When I took the floor, my attention was called distinctly to the fact that the question before the House was on the amendment of the gentleman from Ormsby, and I spoke to that question. So did the gentleman from Washoe, (Mr. Nourse,) and every other member, from the moment I entered the Convention up to this time, has been specially addressing himself to the amendment of the gentleman from Ormsby.

Mr. JOHNSON. I am indifferent as to which amendment is to be first determined, but to preserve that uniformity of proceeding which has characterized this Convention hitherto, I think the point of order should be held to be well taken. It matters not to what the remarks of gentlemen have been addressed; I do not think that can weigh aught, for the debate has taken a very wide range, as is allowable in Committee of the Whole, where gentlemen are expected and permitted to address themselves to the whole subject matter, with a wider latitude than is desirable in the Convention proper. I need go no further than the speech of the gentleman from Storey (Mr. DeLong,) himself, to show that the debate has had as much to do with the amendment of the gentleman from Storey (Mr. Tozer) as it has with mine. But that has nothing to do with the question. It is one merely of parliamentary usage, under our rules, and I repeat that the position I take now is in conformity with the previous ruling of the Chair. The vote should be first taken on the amendment of the gentleman from Storey, as that proposed to strike out but a part of the section.

The CHAIRMAN. The former ruling has been that when a motion was made to strike out, the Convention had a right to perfect the language before taking the vote on striking it out.

Mr. JOHNSON. Suppose my amendment prevails, how stands the amendment of the gentleman from Storey? There is no language left to strike out, as he proposes to strike out, and his amendment falls of itself. There can be no vote upon it.

Mr. DeLONG. None would be necessary. The action of the Convention does away with the motion. That is always the effect of a substitute.

The CHAIRMAN. The Chair will hold, according to the former ruling, that the vote must first be taken on the amendment of the gentleman from Storey (Mr. Tozer). The Chair now will decide, adhering strictly to the former ruling of the Chair.

Mr. DeLONG. I appeal from the decision of the Chair, and I will state as the ground of my appeal, that an amendment to an amendment must be put first.

Mr. WARWICK. Suppose both an amendment and a substitute were offered, would the Chair still entertain a motion to amend? It has been repeatedly ruled in this Convention that there can be only an amendment to an amendment. I think the question must be put on the amendment to the amendment before you can put it on the amendment.

The question was taken, Shall the decision of the Chair stand as the judgment of the committee? Upon a division, the vote was—ayes, 13; noes, 14. So the decision of the Chair was not sustained.

The question was taken on the adoption of the amendment proposed by Mr. Johnson, and upon a division the vote was—ayes, 11; noes, 11. So the amendment was not agreed to.

The question was next taken on the amendment offered by Mr. Tozer, to strike out the words "including mines and mining property," and upon a division the vote was—ayes, 17; noes, 10. So the amendment was agreed to.

Mr. FITCH. I move that the committee rise, report the article back to the house as amended, and recommend its passage.

Mr. NOURSE. I have an amendment which I should like an opportunity to offer, and I hope the gentleman will withdraw his motion.

Mr. FITCH. I shall not withdraw it, because the gentleman can offer his amendment in the Convention, by way of special instructions.

The question was taken on Mr. Fitch's motion that the committee rise and report, and it was agreed to.

IN CONVENTION.

[The PRESIDENT having resumed the Chair,]

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article X, had made an amendment thereto, and had instructed him to report the same to the Convention and ask the concurrence of the the Convention in the amendment.

Mr. NOURSE. I move that the Convention now adjourn.

Mr. DeLONG. I hope we shall first agree to adopt the report of the committee.

Mr. BANKS. Oh, I hope not, now.

The question was taken on Mr. Nourse's motion, and upon a division, it was agreed to—ayes, 17; noes, not counted.

Accordingly, at 11 eleven o'clock, P. M., the Convention adjourned.

ELEVENTH DAY.

CARSON, July 15, 1864.

The Convention met at nine o'clock, A. M., and was called to order by the President.

The roll was called, and all the members responded except the following: Messrs. Ball, Crawford, Frisell, Haines, Jones, Morse, Parker, Proctor, Tagliabue, Wellington, and Williams. Present, 28; absent, 11.

Prayer was offered by the Rev. Mr. RILEY.

The journal of yesterday was read and approved.

QUESTION OF PRIVILEGE.

Mr. DUNNE. I rise to another question of privilege. I regret very much to do so, or to intrude these questions upon the Convention, and I would not, were it not that I wish to preserve my consistency, at least upon the main point which I have at heart. It is only for that reason that I beg to be allowed again to call this question up. Yesterday morning I desired to explain myself in regard to a report made in one of the newspapers, and the position I held in regard to the effect on the Constitution and its adoption which that report would be likely to have, if it were allowed to stand uncorrected. I stated that the effect of that report would be prejudicial to the Union party, as it would show that action had been taken by the members of the Union party tending to proscribe those who were opposed to them in political faith; and incidentally I called the attention of the friends of the Constitution to the fact that such a report would also interfere with the adoption of the Constitution. I said that while I was opposed to the adoption of the Constitution, I did not wish to aid in defeating it by unfair means; but I did not take the position, and I do not wish it to go before the people of my county, that I have weakened on the proposition I started in on. I do not wish it to go before the people of my county that I am afraid that a certain influence will be used to defeat the Constitution, when I say only that I am unwilling to defeat it by unfair means. I did not wish to make that correction in order that the Constitution might have a better chance of adoption, but I wished to make it simply that the action of the Union party might be properly represented, and that capital should not be made, out of a misrepresentation, against the Union party. And as to the defeat of the Constitution, I simply said I did not wish to have any unfair argument used against it, nor any unfair influence exerted. I never did gain anything yet by attempting to correct a newspaper report, and my experience has been such that I think I will never interfere with the reporters again, unless it is a case of life and death.

TAXATION.

The PRESIDENT stated the question before the Convention to be the Article on Taxation, with the amendment, reported from the Committee of the Whole.

Mr. NOURSE. I do not know that it is in order, but I should like to have the [illegible], which we discussed so fully last night, passed by for another day. There is enough other work to keep us busy until we have time to consult together a little, and see if we cannot get it into a shape that it will not create a division in the Convention. Let the asperities of feeling created by debate pass away, and the members have time to think about it and talk it over. If it is in order, I move that the consideration of the report be postponed till to-morrow.

Mr. DeLONG. I hope the gentlemen will permit the report as made to be adopted, and then let it go on file. Then any amendment will after that be in order. I want to test the sense of the Convention on adopting the report; it may be that after striking out those words it will not be adopted. I think we had better adopt the report and place the article on file, subject to such other amendments, under instructions, as gentlemen may see fit to offer hereafter.

Mr. CROSMAN. I am not in favor at this time of adopting the report, therefore I shall move to recommit it to the Committee of the Whole.

The PRESIDENT. If there be any amendments they can be considered when the question of the report of the Committee is considered; that is, unless the Convention determine otherwise. The question now before the Convention is on the motion of the gentleman from Washoe, which is in effect to make the article a special order for to-morrow.

Mr. NOURSE. I will move that it be made the special order for ten o'clock to-morrow morning.

Mr. CROSMAN. I have no particular objection to its taking that course, but I would ask for information, what would be the effect of the adoption of the report of the Committee?

The PRESIDENT. If the report is adopted there can be no further action except upon recommitment with instructions, but pending the adoption of the report, amendments would be in order.

Mr. CROSMAN. How large a vote would it require, after the adoption of the report, to throw it back into the Committee of the Whole?

The PRESIDENT. Only a majority.

Mr. DeLONG. If it be the pleasure of the Convention to make this matter a special order for a future day, I trust the injustice will not be done my county of making that day to-morrow, when so many of our delegation have got to leave and go home. If we are going to make it a special order at all I hope we shall set it for Monday at two o'clock, when perhaps the Convention will be full. I will move as an amendment to make it the special order for Monday at two o'clock, P. M.

Mr. CROSMAN. I will second the amendment.

The PRESIDENT. My desire is that the greatest number of members possible shall be present when the subject is acted upon.

Mr. TOZER. I do not know as the Convention will be any better prepared to-morrow, or at any other time, to take action than it is at present. Certainly we have devoted a large portion of our time to this discussion. The whole of yesterday, to say nothing of the previous session when it was taken up, was devoted to a full, fair, and thorough consideration of the question, and I really hope that the action of the Convention this morning will not be such as to throw us on the back track, so that we shall have to go over the whole work again. I think we had better adopt the report of the Committee at this time, and then let it come up on the file, like other business.

Mr. FITCH. I concur with the view of my colleague (Mr. Tozer). I hope that we shall take this matter up, and finish it now, one way or another. We have spent a day and a half in the debate, and have pretty much exhausted the subject, and now if we postpone the question we shall have all that to go over again.

Mr. NOURSE. There is one argument I suppose in favor of taking it up at once, and that is, that so far as relates to some of the members, perhaps it is known how they are now, but we do not know how it will be with them to-morrow, judging from former developments. The reason why it seems to me desirable that little time should be taken to look over the matter, and consult about it, is that it is certainly a matter on which no little feeling has been developed by the discussion. I do not myself desire, and I presume no one here does desire, to gain a mere triumph. I suppose what we all want is to make a Constitution which shall be just in itself, and at the same time not containing within itself any elements of weakness. We desire, if possible, to avoid creating prejudice against any of the provisions which we have been discussing. In the course of our discussion—and it has certainly been a heated discussion—members may have been led into undue earnestness, and may have manifested perhaps some pride of opinion; and it would be better, I think, to take a little time to talk it over, and try to get a general understanding, so as to meet if possible on a common ground.

Mr. DeLONG. I desire to accomplish the same end as the gentleman from Washoe does, but I think we had better adopt the report of the committee now. We can afterwards, if desired, make any further admendments, either by striking out or inserting.

Mr. NOURSE. I expect that those words, "including mines and mining property," will be stricken out, and I do not wish to retain them at all, but I do not want the section left as it would then stand. I do not desire to adopt any language which will be offensive, by alluding to a special class of property by name, but at the same time I do not want to leave the language in such a way that it will not cover that class of property. As to this postponement, I have not much legislative experience, and I am disposed to fear the Greeks bringing

vote. But if it is proposed merely to let it go on file to-day, and take no further action, I have no objection.

Mr. DeLONG. That is my understanding, and it is what I am willing to agree to, so far as I am concerned.

Mr. FITCH. In view of the fact that if we postpone the question for a day or two it may be possible for gentlemen of a high order of ability to advance arguments which will induce men to change their minds about it, possibly it may be well to lay the matter over; but I, for one, however, confess that I do not really think that kind of ability exists here to a great extent.

Mr. BANKS. I recognize the propriety of some little delay in this matter; but I think the time proposed is too long, and I therefore move that it be postponed until two o'clock to-day. That gives all the time requisite, if members only desire the time to confer together, and think the matter over. I do not like the section as it is now, and therefore I do not wish to vote to adopt the report of the committee. If we put it over till two o'clock, with the amendments still pending, we shall have all the opportunity to amend that is necessary, and will avoid the seeming inconsistency of adopting a thing which we do not fully approve.

Mr. CHAPIN. My friend from Humboldt has spoken nearly the words I was going to utter myself. We worked until a very late hour last night, and most of us did not rise early this morning, and hence we have had little opportunity for consultation. The recess at noon to-day will give us an opportunity for that. Let us defer the matter till the afternoon, and I think we can then come to a vote, and without any more long speeches, I trust; while if we defer it to a later period we run a great hazard on that score. Let us take it up this afternoon and dispose of it. I think we all want it agreed upon, and fixed, in such a manner as to be just as satisfactory to all as it is possible to make it. I confess that I would like to see some amendments, but I think we can come to an agreement that will be quite satisfactory, if we postpone it till this afternoon.

Mr. NOURSE. I will agree to that.

Mr. COLLINS. For one I am anxious to see this question brought to a final decision, as soon as is consistent with its full examination and understanding by the members of the Convention, but the importance of the subject I think is such that we should not be deterred from its full investigation by any intimations in regard to either long or short speeches. The gentleman from Washoe (Mr. Nourse) has intimated that much feeling exists on the subject. I do not see why there should be much feeling. I certainly should be a very unreasonable being if I insisted on this Convention adopting precisely my views, and I think that any man must be a very inconsistent and a very unfair and unjust man, who should expect that this Convention is to adopt his peculiar views entirely. Here we are with a diversity of sentiment and opinion, and the only way we can possibly arrive at anything like a fair understanding and a just conclusion, is to pour into the common treasury of thought our several views and opinions, and then we shall have the basis of a just compromise. I have my own especial views, but I do not feel disposed to insist that this Convention shall adopt them; and let the Convention adopt whatever views it may, it will not lessen my earnestness for the organization of a State Government.

Our minds are now fresh with the arguments which have just been urged on every side—for this is more than a two-sided question; it is more than a triangular question, for there are four or five, and possibly six different sets of opinions. The questions discussed are familiar to all of us, and at what time shall we be better prepared to act upon them than now? When I say "now," however, I mean at some time to-day. I second most heartily the views of the gentleman from Humboldt (Mr. Banks,) and I second his motion that the subject be postponed until this afternoon at two o'clock, in order that we may then have a final disposition of the question, before it goes on the general file. I do hope that gentlemen will not entertain any strong feelings here, as though they thought that the interests of their constituents were going to be sacrificed if any particular views shall be adopted or rejected.

Mr. DeLONG. Whether we make it two o'clock to-day, or any other time, the question first will be on concurring in the report of the committee. Let us do that now, and then make it the special order for any time you please hereafter. Then any new proposition which gentlemen choose to make can be discussed. But why are not we as ready as we can be? Why are not we prepared now?

Mr. COLLINS. I am not prepared to concur in that report, and I think many others are not who sympathize with me. I would like an opportunity for a conference as to what terms we may agree upon.

Mr. DeLONG. We can do that afterwards—after we concur in the report.

Mr. COLLINS. I prefer doing it before we concur.

[Mr. Fitch in the Chair.]

Mr. JOHNSON. I am indifferent in regard to the postponement, but I only propose to speak to this distinctive matter, that if we consider the report at this time and adopt it, then the only way, as I understand it, in which an amendment can be reached, will be by recommitment to the Committee of the Whole, or to a special committee, with special instructions. The adoption of the report, therefore, involves the necessity of such recommitment, if it is to be amended. Now we know, as remarked by the gentleman from Storey, (Mr. Collins,) that there are more than two sides of the question; that there are, in fact, four or five different views to be taken of it; and the

probabilities are that before final action, those different views will be in some way brought to the notice of the Convention. Now my view is this, that to obviate the necessity of the matter being recommitted to the Committee of the Whole, or otherwise, it would be better that the consideration of the report should be reserved until the time when we propose to dispose of it finally. If that time be this morning, let us dispose of the whole matter now; but if it is the sense of the Convention to defer it to a future day, or to a future hour of the day, let us not proceed further with the consideration of the report now, entailing labor on the officers of the Convention that would be needless. We can, in the way I suggest, save time and trouble, that is all. I do not propose to postpone it a minute later. I am entirely indifferent whether it be considered this morning, or at a future hour of the day, or at a future day; but if it is to be considered this morning, then I say let us go on and finish up the whole matter, and not consider it in part and leave it unfinished.

[The PRESIDENT in the Chair.]

Mr. TOZER. I only urged the adoption, or the consideration of the report of the committee, at this time, because I thought it would be economy of time to take that course. When this matter comes up again, I greatly fear the whole range of argument will have to be gone over again, and a great deal more time consumed on the question; whereas, if the report of the committee is adopted, and the matter placed on the general file, as is done with other business, it then comes up in the regular routine of action adopted by the Convention. Then, sir, any amendments desired to be proposed can be put in the shape of special instructions and referred to the Committee of the Whole, or to a special committee of three or more, and in that way the matter will be greatly simplified, and the final disposition of the subject accelerated. Certainly the action of the Convention, or of the Committee of the Whole, has not gone to show that there is any disposition on the part of the majority to stifle discussion, or to do anything unfair in the premises.

Mr. FITCH. If we concur in the report of the Committee of the Whole, will amendments then be in order?

The PRESIDENT. I cannot see how they would be in order. My impression is that if you concur in the report you would have to reconsider before you could amend, but I would like to hear the opinions of members upon that point.

Mr. FITCH. If we could not amend after concurring in the report, we could before concurring in it.

The PRESIDENT. Yes, sir; I think so.

Mr. FITCH. Then we can amend the report now.

The PRESIDENT. First the question is upon concurring in the report, and that proposition is open for amendment.

Mr. FITCH. Is it open then for amendment now?

The PRESIDENT. Yes, sir; but not however until the question of postponement is decided. When that is disposed of, if the Convention shall have refused to postpone, it will be open for amendment.

Mr. FITCH. I suggest that we had better adopt the plan of proposing the amendments before concurring in the report of the Committee. That at once throws the amendments into the Convention and saves the necessity of referring to a committee, with special instructions to make amendments.

Mr. CROSMAN. I think that has been the previous ruling of the Chair, and it was for that reason that I asked the question as to whether the report could be amended before it was adopted. For that reason I think it had better be postponed.

The PRESIDENT. I cannot call to my recollection the occasion when this question was decided, or when the question has ever before been raised in this Convention.

Mr. BANKS. There is one very serious objection to the adoption of the report of the Committee, and I would not further consume the time of the Convention but that I foresee that difficulty. If we adopt the report, and then make it a special order for a future time, we are liable to place ourselves in a position where trouble may ensue. We have adopted Jefferson's Manual, and under those rules, which we must adhere to unless they are suspended by a two-thirds vote, I find that a subject is not to be committed for the matter or body thereof. That is of course a rule which governs us, and the attention of the Chair should be called to it. The Chair will be compelled to rule, if a general amendment is offered, that the Article should not be committed, for undoubtedly he must rule according to the Manual which we have adopted as our guide. Suppose some gentleman raises this point, when you propose to recommit the Article to a special committee with instructions to amend in respect to the matter or the body of the Article—it will then require a two-thirds vote in order to pursue that course, although it is the course we have been pursuing, to amend a report by recommitment for the matter or the body thereof.

The PRESIDENT. I think the rule has been strictly adhered to. I think the practice has invariably been to recommit, with instructions to amend a certain portion and not the whole bill.

Mr. BANKS. The meaning of the Manual will be further elucidated by reading the paragraph following that to which I have referred:

"When an essential provision has been omitted, rather than erase the bill, and render it suspicious, they add a clause on a separate paper, engrossed, and called a rider, which is read and put to the question three times."

It must not be in the matter or body thereof that the amendment is moved, but of the nature of a proviso or explanation. I have called

attention to this rule, lest some gentleman, on the third reading, should raise this point. The Article is now in a shape in which we can postpone it to the time we desire to consider it, and then we can take it up, and amend it freely, without any restriction. I hope the motion to postpone until two o'clock will prevail, leaving it in the precise position it occupies now.

Mr. NOURSE. I will accept the amendment to postpone it until two o'clock.

The PRESIDENT. I understand the gentleman from Storey (Mr. DeLong) to move its postponement until Monday.

Mr. DeLONG. I withdraw that motion.

The question was taken on the motion to postpone the subject until two o'clock to-day, and it was agreed to.

ADJOURNMENT OVER.

Mr. HAWLEY. I offer this resolution:

"*Resolved*, That when this Convention adjourn, on Saturday, July 16th, it adjourn until Monday, July 19th, at two o'clock, P. M."

I do not know what position other members may take, or whether they will be able to attend in sufficient numbers on Monday morning to go on with the business, but I have received a notice from one of my clients which renders my absence absolutely necessary. I merely offer the resolution, and if it be adopted very well, and if not I shall be compelled to ask leave of absence from the Convention.

The question was taken, and the resolution was adopted.

MUNICIPAL AND OTHER CORPORATIONS.

Mr. FITCH. I understand the report on Article VIII is in rather a peculiar position. It was ordered engrossed, and then retained by the Secretary at the request of the gentleman from Lander, (Mr. Warwick.)

The PRESIDENT. The position of that article is anomalous certainly, but it seems to me that it must be regarded as on the general file, since it has been ordered engrossed by the Convention.

The Convention proceeded to the consideration of Article VIII, entitled Municipal and other Corporations, the question being on the third reading of the article.

PACIFIC RAILROAD.

Mr. FITCH. I have an amendment to offer to Section 9, but I understand it is proposed to offer an amendment to Section 6. I would inquire whether it would be proper to wait for the disposition of the amendment to Section 6—whether the article is to be considered section by section?

The PRESIDENT. It has been reported from the Committee of the Whole, and the report adopted. The only way to amend it is by recommitting it with instructions.

Mr. FITCH. I move, then, to recommit the section to a special committee, with instructions to strike out all after the word "purposes" in the fifth line of the printed copy, and insert the following:

"*Provided*, That the State may provide for the payment of the interest upon bonds of the Central Pacific Railroad Company to an amount not exceeding three millions of dollars for a length of time not exceeding twenty years, at a rate of interest not exceeding seven per cent. per annum, in aid of the construction of the Central Pacific Railroad across the Sierra Nevada Mountains; but no law to provide for the payment of interest as aforesaid shall be effective unless sanctioned by a vote of the people."

The question was stated on the adoption of the instructions.

Mr. FITCH. I will detain the Convention but a very few minutes. I have offered the amendment on the hypothesis that it is the desire of a majority of this Convention to extend aid, or rather to permit the Legislature of this State to extend aid, to a railroad which shall connect this State with the navigable waters of California. The pending proposition, or rather the section as it would stand if it were not amended, would provide that the State may issue its own bonds to such railroad company, to be expended at the rate of fifty thousand dollars per mile, as the road progresses in this State; but this amendment proposes, not to give the bonds of the State, but to pay the interest on the bonds of the company for twenty years, in place of giving the principal sum outright. Now, as was explained in a manner satisfactory to me at least, by the President of the Central Pacific Railroad Company, two days ago in this Convention, the incorporation of a section into the Constitution stating that the Legislature may issue bonds to an amount not exceeding three millions of dollars, to the company which should first complete a railroad to the State line, would be an injury rather than a benefit, and would retard rather than advance the construction of the only road that ever can, or that is ever likely to connect this State with the navigable waters of California. It was stated then—and it is a matter which came very properly before the Convention—that if we say we will give that amount to the railroad which shall first reach the State line, we thereby imply that there is more than one road likely to fulfil such condition—that there are two or more such roads which are striving to reach the State line—and that such statement to a certain extent would throw a doubt upon the resources, a doubt upon the intentions, and a doubt upon the capacity of the managers of the only road which can reach the State line. To the extent that we do that, we do something towards depreciating the credit of the bonds of that company in foreign countries, in the Atlantic States, and in those money markets where men have but limited means of information in regard to such subjects as the intentions and the resources of railroad companies in those mountains; and just to that extent we place a leverage in the hands of parties who are interested in retarding that road, and thereby assist them

to do so. Now, as every member is probably aware, there are parties who are certainly deeply interested in retarding the progress of any road to be built, running from the navigable waters of California to the State line. There are three expensive toll-roads connecting us at present with California, and their profits would be decreased and almost utterly destroyed by the completion of the railroad. There are three or four stage lines, carrying passengers on those routes, and their profits would be decreased, and their business almost destroyed by the railroad. Then there are two extensive lines running between San Francisco and New York, and their profits and business are decreased, necessarily, with every mile of railroad which is constructed between the Missouri and Sacramento rivers. Now, sir, I do not wish to censure these institutions. Their interests are at stake, and we all know that it is human nature to regard one's individual interests before the general good of the community. But while I do not wish to charge evil purposes—a want of patriotism, for instance—upon those who are attempting to retard the construction of the railroad between here and the navigable waters of California, while I do not desire to censure those interested for striving to retard it by every means in their power—and one great means to that end would certainly be to injure the credit of the Central Pacific Railroad Company;—yet, at the same time, I do not wish to allow the interests of those corporations or associations or individuals to so far come in conflict with the general good as to retard the progress of that great work which is so very material to the necessities, and so dear to the hearts of this people. So much for that.

Now upon the hypothesis that it is the intention of this Convention to allow the Legislature to aid a road to be built between the navigable waters of California and the State line, I lay it down as an incontrovertible proposition that that aid should be extended, if at all, to the only road that can be built. Gentlemen have said—I do not know as it has been said in the Convention, but it has outside—that there is another road likely to be built, and that we are doing injustice to that other road, by mentioning the name of the Central Pacific Railroad. I do not think that careful investigation will justify such a conclusion. What is the progress of the Central Pacific road? The company have completed their road out of Sacramento a distance of thirty-one miles, and have the iron and rolling stock for a considerable distance further, while this alleged competing line have only graded a few miles out of Folsom, and there is no company even organized to build any road on that route further than Placerville. There is not only no thorough survey, but no organization, I repeat, to build any road this side of Placerville; and I do not think there ever will be, for the reason that they would be required, under the general statute of California, to pay in ten per cent. upon the capital required for the construction of the road, before the organization of the company, and that would come to nearly or quite a million of dollars—an amount which men would probably not care to invest in a most unprofitable game of brag.

Now, sir, without debating the question as to whether or not the aid of the General Government to the Central Pacific Railroad was wisely extended, or as to whether or not they have selected the best route for their road, we know this fact, that the Government of the United States has given to the Central Pacific Railroad Company forty-eight thousand dollars a mile, that the county of San Francisco has voted six hundred thousand dollars, that the county of Placer has given two hundred and fifty thousand dollars, that the county of Sacramento has given three hundred thousand dollars, and that the State of California has not only given ten thousand dollars per mile, but in addition to that gives the interest, at seven per cent. per annum, upon the company's bonds for a million and a half of dollars. That is the aid which has already been extended and secured to the Central Pacific Railroad Company. Now I put it to the common sense of the Convention if there is any other road which is likely to secure such aid, or if there is any other road which will probably secure so large an amount of aid from the United States Government. It is not likely, I think all will concede, that anything of the kind will be secured to any other road. This road has the start, and it is not likely that any other road will ever be built across the mountains, and if we extend any aid at all to any road, it follows of course that we should give it to the only road which is likely to be built, for we should offer our aid where it will be likely to be of some value. If we do not do that, at least we should not take such action as will imply that there is more than one road, and to that extent, in foreign markets, in New York, in London, in Paris, wherever they have to go to negotiate their bonds, raise a doubt against them, because these capitalists have not the means of investigation, and if they find a statement in the organic law of our State implying a doubt in regard to that road, it would certainly be apt to injure the credit of the road.

Now I have some statistics here which I wish to present very briefly.

Mr. DuLONG. Oh, do not draw them, for heaven's sake.

Mr. FITCH. I will not detain the Convention long. It is, we are informed, one hundred and forty-four miles to the State line from Sacramento, and where the mountains are practically crossed, near O'Neill's, on the Truckee, is forty miles from the summit. The cost of construction of these one hundred and forty-four miles of railroad is estimated at about fourteen millions of dollars. The company about to build that road has aid already granted as follows:—

By United States Government $48,000 per mile, 150 miles	$6,912,000
By State of California $16,000 per mile, 150 miles	2,112,000
By counties of San Francisco, Sacramento and Placerville	1,120,000
Making a total of	$9,232,000

That is the total amount which has already been donated to this road which is to cost fourteen millions of dollars for its construction to that point. Now, how is it proposed to raise the other five millions?

Mr. BROSNAN. Is not the aid of the United States Government $32,000 per mile?

Mr. FITCH. No, sir; it is $48,000 per mile.

Mr. NOURSE. Is not the company authorized to make a first mortgage for $48,000 a mile, which, as a lien, comes in ahead of the government bonds?

Mr. FITCH. That is what I am coming to. The government aid of $48,000 per mile is almost a donation, as it is only a second mortgage. Now the company is authorized to raise the money to complete the road by its first mortgage to the amount of $48,000 per mile, permitted by the General Government, and that, if negotiated, will suffice to complete the road. Then the State of California proposes to pay the interest upon a million and a half of those first mortgage bonds, and if the State of Nevada concludes to pay the interest on three millions more, that will leave the company only to pay the interest upon five hundred thousand, and it will enable them to devote the entire earnings of the road to its construction beyond or to that line. Therefore it is deemed best for the State of Nevada to give the interest upon those three millions to this road, rather than issue her own bonds; and the company will then have the means of giving all the bonds, save half a million, a market value which they otherwise would not have, because the interest would be paid by corporations, or by States, rather, outside of the railroad company itself; and in that way we would be extending very great and effectual aid to the company, the calculation being that after it has reached the State line, the appropriation by Congress of $32,000 per mile, added to the earnings of the road, and the power to make the first mortgage bonds, will be sufficient to construct the road without further aid, because then they will have passed the most expensive portion of the route.

Now, Mr. President, whether this road can be built to the State line without the aid of Nevada or not, whether the aid of Nevada would expedite the progress of the road or not, whether the two hundred and ten thousand dollars of interest a year can ever be afforded by the people or not, whether it would be policy for the State to give that amount or not, and whether the tax would be onerous and oppressive to the people or not, are all matters which I do not propose to discuss, because I do not regard them as being properly before this Convention for its consideration. We have no power to grant the aid to the road. We cannot, or certainly should not say that the Legislature shall give it, or that the people shall indorse the action of the Legislature. We certainly have no right whatever to say that. But it is simply proposed in this section as it will be amended, if my motion prevails, to give the people of Nevada a right to extend that aid—to give the people the power to grant it, through the Legislature, if they wish to do it, and if the people indorse it. We simply give them the power to lend that aid. We throw the door open, and allow them to give it if the people demand it, but not otherwise.

I should be possessed of a great deal more of arrogance and conceit than I should care to entertain, or to have attributed to me, if I should say, in my representative capacity here, that the people of Nevada never shall grant any aid to the Pacific Railroad, whether they want to or not. I think we have no legitimate power to say that. I think it is more proper for us to say that the Legislature may do what they deem best for the people. For us to shut the door, and lock it in their faces; for us to say "Whether the people are willing or not, we say you shall not grant any aid to the Pacific Railroad"—I would regard as a high piece of presumption. Sir, without referring to what my action as a citizen might be, without saying whether I would or would not indorse the action of the Legislature extending this aid—for that is not the question—I hold my duty to be to allow the people either to aid it or not to aid it, as they shall decide when the question shall be presented. There our duty ceases, and anything beyond that in my judgment would be sheer arrogance.

With all due respect to the members of this Convention, I think that the members of the State Legislatures of 1865, 1867, or 1869, those who will come after us, those who will represent, better than we possibly can, the condition of Nevada at that period of time—five, seven, or it may be ten years hence—will be far better able to judge than we are now of the capacity of this people to endure that amount of taxation. And, sir, they will be better able to judge of the will of the people to give that amount, and the necessity of granting it, than we can possibly be. I say, then, that since they can better judge of these questions than we can, we should leave them to their judgment, and I am in favor of this amendment, giving to them an opportunity to exercise their judgment. It is still restricted by the Constitution. Instead of an absolute donation of three millions, we ask only that the Legislature shall be permitted to give the interest on those millions for twenty years.

Mr. GIBSON. That would amount to four millions and two hundred thousand dollars.

Mr. NOURSE. That is just what it amounts to.

Mr. FITCH. Gentlemen can calculate it at

their labors. Instead of giving both principal and interest, we propose to pay the interest only; always provided that the Legislature grant it, and the people indorse their action. And I say it will be arrogating an amount of wisdom, as to the power, and the energy, and the resources of our State in the future, which we do not possess, and which, not being prophets, nor the sons of prophets, we cannot possess, to say that the people shall not grant this aid, whether they are able or not, or willing or not.

Before taking my seat, as I shall not speak again on this subject, I desire to say in conclusion that I express here my belief, my expectation, and my hope that the Legislature, being so empowered, will grant, either all of this aid, or such portion of it as may be necessary at the time, to help along the Pacific Railroad, and that the people will indorse their action, and be able to do so without any serious inconvenience to themselves; and that by so doing they will materially aid the railroad. I should be very sorry, in the future of Nevada, when this great road shall be finished across the mountains, when the traveler shall start from Sacramento in the morning, dine at Reese River, breakfast at Salt Lake, and watch the lengthening shadows of that day as they decline along the valley of the Platte—I should be sorry, I say, after the consummation of this mighty work, which will be the boast of the nineteenth century, the pride and glory of the age, a work grander than the aqueducts of Rome, more stupendous than the pyramids of Egypt, more wonderful than the Sphynx in the desert sands, I should be sorry if it should be said in that future time that such a work had been commenced and carried through at a time when the nation was struggling in the throes of a civil war, and that in the community which was most benefited by it, the community which was raised from a state of comparative indigence to wealth by that road, the community which had been increased so greatly in power, wealth and potency by that road, their representatives assembled to frame a fundamental law, to frame a law which was to last from generation to generation, a law which was to guide the legislation of the State throughout future ages, had absolutely declared that the people of Nevada, whether they wished it or not, should not be allowed to aid that road in the hour of its direst necessity.

Mr. DeLONG. Since I voted before on this proposition I have had some new light, afforded by the appearance on the floor of his excellency, ex-Governor Stanford of California, the President of the Central Pacific Railroad Company. I took pleasure in asking various questions of that gentleman, in order to satisfy my own mind, and the minds of others, upon the various questions involved in this matter, and I have come to exactly this conclusion, that as a whole people, or as a State, we stand by the side of the Pacific Railroad enterprise like a "wild cat" mine by the side of the Gould and Curry. According to Governor Stanford's own showing, if we give this aid it would not help the road a pin, yet he would like it, because it would be an indorsement of the enterprise, that is all. While it would distress us terribly to raise the amount, it would scarcely help the railroad at all. That is evident by the gentleman's own admissions.

Why, sir, let us look at the present condition of this enterprise. They have built thirty-one miles of their road, and got it in running order, and every thing paid for; and yet in order to accomplish that they have not received a dollar from the national or State government, or of the county aid, or any thing else. They have done all that out of their own contributions. Very well. They have got thirty-one out of the one hundred and forty-four miles already built, and paid for, and on which they are entitled to execute a first mortgage of thirty-six thousand dollars per mile, and that they are about to execute. Then the United States Government comes in with its aid of thirty-six thousand dollars per mile.

Mr. NOURSE. Forty-eight thousand dollars per mile.

Mr. DeLONG. That is the road in the mountains.

Mr. NOURSE. But the lower figure is only for seven miles, and then the mountain part begins.

Mr. DeLONG. I may be astray to the extent of a few figures, but an approximation is all I care about. Suppose it is thirty-six thousand dollars per mile which they are entitled to from the General Government, with the right to execute a first mortgage for the same amount; then I make it ninety-eight thousand dollars per mile which they are entitled to raise by their own first mortgage, and the United States aid. That gives them a fund of three millions and thirty-eight thousand dollars, according to my figures. They have got that amount then as assets in hand, now, and when they get that one hundred and forty-four miles done which is to be finished, that will bring them in over eleven millions more. Then you have got to add to all that the two hundred and fifty thousand from Placer county, the three hundred thousand from Sacramento County, and the six hundred, or four hundred thousand, as the case may be, from San Francisco, besides the one million four hundred and forty thousand dollars which the State of California gives at the rate of ten thousand dollars a mile. That is what they have to look to, with thirty-one miles of the road already completed, and then, in addition, they have from the General Government a grant of twelve thousand eight hundred acres of land per mile, making for the one hundred and forty-four miles, one million eight hundred and forty-three thousand two hundred acres.

Mr. FITCH. One of the gentleman's most important items—the interest paid by California—is not a donation; it is based upon the

Appellants that they will negotiate the bonds. It aids them simply in negotiating the first mortgage, and amounts to nothing if they do not negotiate the bonds.

Mr. DeLONG. But Governor Stanford, the President, says they will negotiate them.

Mr. FITCH. California then pays the interest on a million and a half of the first mortgage bonds as soon as that amount is negotiated, and no more.

Mr. DeLONG. Governor Stanford said they intended to negotiate those bonds now. At any rate, they have only one hundred and thirteen miles of road to build, which is estimated to cost them fourteen millions of dollars to build, and they show assets of sixteen millions of dollars, according to their own statements—two millions more than they want, if Governor Stanford's estimates are properly stated. As I make it, these are the assets, upon which they have to rely, resulting from the munificent aid which has already been granted to this enterprise:

California State aid, $10,000 per mile, 144 miles,	$1,440,000
California interest, 7 per cent., twenty years,	1,568,000
First mortgage, $48,000 per mile,	6,912,000
United States Government bonds, $48,000 per mile,	4,912,000
San Francisco subscription,	600,000
Sacramento subscription,	200,000
Placer subscription,	250,000
12,800 acres land per mile, 144 miles, 1,843,200 acres, say at $2 per acre,	3,686,400
Total amount of aid given,	$21,000,400

Now, in the face of all this, how can they ask poor, little, old, sage-brush Nevada to burden herself by giving more aid, when it would be of little or no practical benefit to the road?

Mr. FITCH. Those sixteen millions, which the gentleman said were available assets for building the road, are all the time based upon the hypothesis that the company will negotiate the bonds of the Government at par, and that is not by any means probable.

Mr. DeLONG. Does the gentleman think there will be any difficulty in negotiating them, when the road thus far is entirely paid for, and they are secured by the Government and by the State? If so, he troubles himself about them more than Governor Stanford does, who does not doubt but that they will be eagerly grabbed at by anybody who has the money.

Now while we anxiously desire to see this road speeding forward, yet, when we consider the magnificent support it has already obtained, the munificent donations which it has received, and when you hear the President of that road, on this floor, make a recount of the resources it has, so abundant that it appears we could not add strength to the enterprise even by giving everything we have—perfectly plethoric with fullness, and wealth, and happiness—when we hear that, and think that we are a little sage-brush, young people, actually hesitating about starting out on our march as a State Government, for fear we cannot pay the ordinary expenses of that State Government from year to year, although we do all we can to economize and reduce the expenses—when we consider our position, and feel and know that this aid will not do that road any appreciable good, or hurry its construction perhaps a single week, I say we should hesitate a long time before we place on ourselves, on our constituents, on those who are to come after us, this mortgage on their resources to the extent of two hundred and ten thousand dollars a year, to be paid out of the pockets of the people, in addition to the burdens of the State Government.

Mr. EARL. Will my colleague allow me to ask him a question? Does this amendment propose that we shall place this mortgage on the people, or simply that we shall give the Legislature power to do so, if in their judgment it is expedient?

Mr. DeLONG. It is no matter whether we do it or the Legislature does it; it will be a mortgage on the people in the end if we adopt this provision.

Mr. EARL. No, sir; they will have to let the people pass upon it first.

Mr. NOURSE. But it will be insisted that the people did pass upon it when the Constitution was adopted.

Mr. DeLONG. I understand that. I understand that we cannot adopt a Constitution until it is ratified by the people. And I understand that when they have ratified it, all the provisions of the Constitution, either requiring or empowering the Legislature to grant this aid, will become operative. I understand all that. But I say if our action means anything, it means this: We frame a Constitution by which we permit the people to do this thing with a hope and expectation that they will do it, and I say we should hesitate before we do anything or say anything about it in this fundamental law. And I say that whatever we do is done as an entirety, and when it is submitted to the people, you compel men to vote for what they may regard as an unwelcome tax, or to vote against the Constitution in its entirety. I say that this debt of over four millions of dollars which we have to contract to give this aid, in the way that gentlemen propose to give it, is more than the people can bear, or are warranted in assuming. Why, the President of the railroad company told us at the very first, that he had rather we would not give them anything than to give them what we offered—which was fifty thousand dollars per mile for every mile of railroad built within our limits, to the extent of three millions of dollars—coupled with the condition which we had imposed. Now did you ever before hear of a railroad company so independent, and so rich, that they could come upon the floor of a Constitutional Convention like this, assembled in this chamber, and tell that body "We would rather you would keep your three millions of dollars than to give it to us coupled with the conditions upon which we have to take it—the condition that we shall be

the first to get here, and that if we are not the first it shall be given to another road." Imagine the condition of a railroad which refuses three millions of dollars, with the same trifling consideration, with as much nonchalance, as a man might refuse to take a drink with a gentleman who should ask him. I say it is preposterous. And I say if the aid be granted that is asked for, it will not hasten the completion of the road one day, while it will burden our State with an immense debt. And if you incorporate that provision into your Constitution, it will call for and receive at the hands of the people more earnest opposition to the entire instrument, than any other clause which you have yet incorporated, or which you can possibly think of putting into it. Poor men, struggling here to build up a State in the sand, in the bosom of the desert, cannot consent to lend or give to a railroad company which has more money now than it needs. They will not voluntarily tax themselves to the extent of four millions of dollars in order to donate it freely to that railroad company.

Mr. WARWICK. Mr. President, I am really astonished that a gentleman usually so ingenuous and honest in the declaration of his opinions should have arrayed before this Convention an accumulation of figures which only serve to mystify rather than clear the subject, and should have made declarations on the floor of this Convention altogether calculated to mislead. The gentleman from Storey did in his wisdom put the question to the President of the Pacific Railroad the other day whether he would or would not rather have the State aid under certain conditions, and what was his reply? He stated that if it were granted under certain conditions it would be but slight advantage to the railroad company, but under no conditions did he undertake to repudiate the aid if we should see fit to grant it.

Mr. DeLONG. Did he not say that he would rather not have any thing than to have it in the shape in which we offered it, or coupled with that condition?

Mr. WARWICK. I did not so understand him.

Mr. EARL. The answer of Governor Stanford was to this effect, that if we were to give the aid in that form it would intimate that there was another road, a practicable road, in progress—that it would seem from the manner in which we proposed to give that aid, to show that there was a doubt, as to the practicability, or that there was some competition. But he did not say that they would refuse the gift.

Mr. WARWICK. Satisfied with the explanation of the gentleman from Storey (Mr. Earl,) I shall proceed. The President of the Pacific Railroad Company did not address himself to the subject as though we were a legislative body, deciding the matter for the people of Nevada, nor as though a bill making the appropriation were before the Convention, and we were about to declare whether we would or would not grant the aid which some of us desire that the people, and the people only, shall decide upon. Gentlemen speak here as though we were about to put our hands into our pockets and scatter three millions of dollars to the winds, without any sort of recompense or return for it. Now what is the real situation of the question before the Convention? Here we are, isolated from the great channels and marts of commerce, deriving all our supplies from the borders of another State, by means of routes of communication troublesome and expensive, paying a tax of three millions and a half of dollars since the commencement of our existence as a Territory for the single article of freights alone, and over half a million of dollars in that time for passages. Now does any gentleman deny the proposition that such a line of communication as we are desiring to aid would naturally lessen the cost of everything we consume, and would at the same time not merely reduce but almost actually abrogate and destroy the time required in crossing those mountains? At the present time a day and a half or two days is required, at the least, for that transit, and by this line of communication it would be reduced to less than half a day. Now is it not an axiom with the American people that time is money? Do we not work day and night in extracting the gold and silver from our mines? Why then should we submit, if we can avoid it, to lose our time in crossing the mountains when we can have a line of communication which will materially lessen that time so much, to say nothing of the decreased expense? I say the amount of the aid which we propose to lend—not if we say so, but if the majority of the people of the State shall indorse our action, or the action which we empower our Legislature to take—will be returned to the State in less than two years.

The bonds of the State, it is proposed, shall run for twenty years. Now, sir, are we to be looking always at the present time, at the present condition of our State, and never at its future development? Are we not to look at and learn a lesson from what has been done during the past four years, during which time towns and cities have sprung up, and millions of dollars have been invested by capitalists within our limits? Are we still to look at the present and never at the past or the future? I am astonished that the gentleman from Storey, (Mr. DeLong,) coming from California, a gentleman whose whole life has been spent in new communities, should speak like one who has just been awakened from a Rip Van Winkle sleep, and expects to find every thing unchanged, just as it was when he sunk into his long slumber fifty years ago. It is to him, and to such as he, that we should naturally look to advance our progress, to help on these great works of improvement, to assist in the development of this State in the future. Of all the stupendous works contemplated in the present age, not one so commends itself to the judgment, to the wis-

ture, and to the kindly consideration of statesmen, whose handiwork will be engraven upon the Constitution, which if it shall be adopted I trust shall live when we are dust and ashes, as the Pacific Railroad enterprise.

I say there is no work which should command more to our kindly consideration than that which is now under consideration in this body. And why? Is it alone, or chiefly for the advancement of our sister State, lying beyond our western border? Not at all. I contend that it is for our own benefit, for our own aggrandizement. We are asked to invest a small amount of capital, but with the hope of a speedy return. Suppose a man living upon a hill has a spring of water in the mountain behind his house? It is a long and weary task to travel up that mountain, and bear down from day to day the little supply of water, and nature would soon be exhausted by that labor. But by the appliances of science he conducts the stream to his door, where he, and his children, and his flocks and herds, are daily refreshed, with but little cost and an immense saving of time and labor. So it is with us. It is not that we are giving this road anything. We say merely that we will lend our credit, if the people indorse the proposition. And I wish that in treating this question, the gentleman from Storey (Mr. DeLong) would be ingenuous enough to admit that we are not legislating here, nor imposing any new burden upon the people. We are doing nothing of the kind. We only leave the door open so that the people in their wisdom may decide hereafter whether it is better for them or not that this great national work shall be constructed.

In what situation do we leave this matter, provided we strike this article from the Constitution altogether? It will then require a vote of two-thirds of the Legislature, and the lapse of two years of time, in order to amend the Constitution, so as to place in it the very provision which we are now seeking to incorporate—for I presume we shall adopt that which is the usual and customary rule in regard to amendments of the Constitution. We propose only to insert a provision here, not that the people shall lend this aid, but that they may do so if they find that their interests require it. I do sincerely hope that every gentleman, in addressing himself to this question, will be honest and ingenuous enough not to assert that we are about to inflict on the people a heavy burden, when all we do is merely to leave the pathway open. We do not wish to say that this little body of thirty-nine, who have come up here to represent the people of this Territory in Convention, possess all the wisdom and intelligence not only that there is in the Territory now, but that may exist within our limits perhaps for thirty years to come. We do not wish it to go out that this little body of thirty-nine men have said, "We know that it was a great national work, and that you needed it because your mines could not be opened without it; we know that the moment it should be constructed your transportation would be cheaper, and all the expenses of living would be cheaper, and all the kindly harmonizing influences and associations of your childhood would be brought nearer to you, yet we refused to allow you to aid it." We do not wish to say, "We shut the doors in your faces, when you demanded that we should let you in."

I appeal to gentlemen here, if there is any yearning in their hearts towards the old homes away towards the rising sun, where they sported and played in childhood's happy hours, not to do this thing. Do we never hope to see those homes again? We have already incorporated into our Constitution a provision which prevents the Supreme Judge from leaving the State, for a longer period than ninety days at a time, though he holds his office for ten years, and although that may seem to be a stern, yet it is a wise provision. But, sir, though the excitement and rush of business and pleasure may obscure and dim the feeling for a time, the old and hallowed affections never die, even in the hardest hearts, and they may one day lead us back toward our childhood's homes. Here, then, is a means by which in a week or a fortnight we can be enabled to see those homes again. But aside from all this sentiment is the practical consideration of the development of the State itself.

Mr. DeLONG. I want to ask the gentleman from Lander a question. Is he a candidate for Supreme Judge?

Mr. WARWICK. No, sir; but I hope one day to assist in elevating the gentleman from Storey to that honorable position. I know his aspirations, and I know the wisdom, the judgment, the intelligence, and the sagacity of the gentlemen, which I think entitle him to that high position, provided it is not filled by a better man.

Mr. DeLONG. I accept the amendment.

Mr. WARWICK. All I ask of the opponents of this measure is, that in addressing themselves to its consideration they will strictly confine themselves to the fact—not that it is a burden which we are imposing upon the people, but that we simply leave it to the people to decide, and do not undertake to decide for them, in advance, upon a measure of such great and general importance.

Mr. KENNEDY. I wish merely to explain how I shall vote, and to give my reasons. You, Mr. President, and every other member of the former Convention, will recollect that I was a warm advocate in that Convention of the Pacific Railroad, and of an appropriation for it. But, like the gentleman from Storey (Mr. DeLong,) I have changed my views, and for the same reasons, namely, the statements of the President of that road. Mr. Stanford stated the cost of the road, I believe at about fourteen millions of dollars.

The PRESIDENT. I think it was fifteen or twenty millions.

Mr. KENNEDY. Well; fifteen or twenty millions. I considered that that was the cost from the commencement to the completion of the road. Now what are the assets of the company? My figures are rather larger than those of the gentleman from Storey (Mr. DeLong.)

We have first, an appropriation from the State of California of ten thousand dollars per mile, for the one hundred and forty-four miles, which is the estimated distance, amounting to two million, four hundred and forty thousand dollars. Then I estimate the guarantee, or rather the payment by the State of California, of seven per cent. on one million and a half of the company's bonds, for twenty years, at one million, five hundred thousand dollars, though it will really come to more than that. Then they have their first mortgage of forty-eight thousand dollars per mile, making six millions, nine hundred and twelve thousand dollars. Then there are Government bonds, amounting to six millions, nine hundred and twelve thousand dollars more. Then there are the appropriation by San Francisco of six hundred thousand dollars, of Placer County, two hundred and fifty thousand, and of Sacramento County, three hundred thousand dollars. And lastly, there is the appropriation by Congress of twelve thousand, eight hundred acres of land per mile, which, I think, at a very low estimate, will certainly be worth two dollars per acre, making a total for the land of three millions, six hundred and eighty six thousand four hundred dollars. That makes altogether an aggregate amount of twenty-one millions, six hundred thousand, and four hundred dollars, besides which they have, according to their own statement, thirty-one miles of railroad already made and paid for. Now if the entire road is going to cost but fourteen millions or sixteen millions, there are from five to seven millions over; and even if you put it at twenty millions, then there are more than a million and a half of dollars already, over and above the cost, to go back into the pockets of the stockholders. They have all this land from the Government; they have the road for thirty-one miles, completed and paid for, and the rolling stock for a distance of sixty miles paid for.

Mr. NOURSE (in his seat.) And the iron.

Mr. KENNEDY. And the iron, and everything ready for the track. Now I do say that a railroad which is in circumstances like these should not receive aid from this Territory to the amount of three millions of dollars, when every one knows that the real question in our coming canvass will be whether we shall or shall not be able to pay the expenses of a State Government.

Mr. FITCH. Is the gentlemen under the impression that with that showing, if it could be made, the Legislature would be foolish enough to grant the aid?

Mr. DeLONG. They might be as foolish as that, if we are.

Mr. KENNEDY. Now a word as to this idea of leaving it to the Legislature. I know, young as I am, something of human nature, and I know that a powerful corporation, like the Pacific Railroad Company, will be able to influence the Legislature, and the people sufficiently to carry the appropriation through. Not that I suppose all men are corrupt—I say nothing of the kind—but they will use their money to employ persons to place their views before the Legislature, and before the people in such a light as to make it appear that it would be favorable to the interests of the State to make this appropriation, and there will be no person employed on the other side whose business it will be to show the fallacy of their arguments. I contend that we are capable and competent to judge of this matter, and I believe that we should decide it.

Not only that, but I know the sentiments of my constituents on this subject. I know that during the campaign upon the old Constitution this provision was strongly opposed. Although it was guarded by requiring a vote of two-thirds of the Legislature, and a subsequent vote of the people, yet it was considered that by placing it there it was made absolutely certain that the money would be appropriated. I know that every calculation of expenditure made by the opponents of the former Constitution, was made to include the three hundred thousand dollars of interest on the three millions of bonds that was to be paid every year. That was the calculation in our county, and the people believed it was a correct calculation. Now I am willing to take the chance of my constituents indorsing my action in opposing any appropriation whatever for the Pacific Railroad under the circumstances as they exist.

And here is another point: suppose we authorize the appropriation under all these guards and restrictions—the appropriation cannot be made before the Legislature meets, in January next; they certainly will have to take time to think over and discuss the matter before voting upon it, and the action of the Legislature cannot be ratified by the people, (allowing the shortest possible time,) under one year from now. But Governor Stanford said that he had no doubt the railroad would be completed inside of three years without the aid of Nevada, and he could not give any estimate of how much that aid would hasten the time of its completion, even if the appropriation were made in the manner he wished to have it made.

Mr. DeLONG. Did not he say he did not know that it would shorten the time any?

Mr. KENNEDY. No; I think he said he did not know how much it would shorten the time. Now if the road will be completed without our aid, or if our aid will only hasten its completion a few months, I say let us wait for it those few months, rather than saddle upon the people of the State a tax of two hundred and ten thousand dollars every year. If our bonds were worth the three millions—if they would actually

aid the company in the extent of three millions of dollars—then perhaps I might be willing to lend that aid, because it would assist the road materially; but, as has been stated, under the most favorable circumstances that we can hope for, our bonds to the amount of three millions will probably not be worth more than one million in the market, and so we would have to pay three millions of dollars, while the company would receive the benefit of only one million from our liberality. I am not willing to sacrifice the people's money in that way.

Now, sir, my action in voting on the various measures coming before the Convention will be guided in some degree by policy. Whenever I can vote for an article or section in the Constitution in a form which, although it may not exactly suit me, I believe will satisfy the great mass of the people, without violating any principle, I am willing to put it in that shape, and I believe that the striking out of this whole clause in regard to an appropriation to the Pacific Railroad will meet the views of my constituents, when I can make such a showing as this in regard to it, and upon such good authority. I have no doubt of that whatever.

Mr. COLLINS. I do not think the question now before this body is whether the Legislature shall give three millions, or one million, nor whether it shall loan the credit of the State to the extent of three millions, or one million. The question is not whether or not the Pacific Railroad will be constructed under its present management, so as to strike the line of this Territory or State within three years. The question is not whether the views Governor Stanford expressed on this floor the other day—which certainly did not make a very favorable impression in behalf of his claim on the State—were correct or not, nor whether this road will be completed in one, two or three years, nor whether the present management will be able to carry it through with the aid which Congress has given, and the donations and loans which have been made by the State, and the several county organizations of California. But the real question before us is this: we propose here to frame a Constitution which shall tie up the State, and its Legislature, in regard to the amount of debt which may be contracted in the future, and in doing that shall we say, with our present knowledge of the subject, that the people, and the Legislature of the State, shall not, after calm deliberation, after examining all the facts which the Legislature may have before it, three years, or ten years from this time, even if that Legislature shall come to the deliberate conclusion, in view of all the circumstances then existing, that the State ought to give this railroad company some assistance, be permitted to take that action? It is proposed that we shall not allow them to submit the question to the people—that the people shall not be allowed to have a vote upon the question. I ask is this body disposed to tie up in that manner that legislative body which is to represent the people in the future, in regard to a great national work like this? I think gentlemen do not comprehend the advantages, the importance, and the grandeur of this great national work. We who live here at the base of the mountains can get our lumber, our timber, and all our freights, brought to us at a small expense compared with what they cost the people who live in Humboldt and Lander counties, and hence we may not feel the pressure as they do; but if I were a delegate from Lander County or Humboldt County I should certainly press upon the Convention the importance of this question to my constituents, with all the energy and all the skill I could command.

For one I have very little faith in the opinion of Gov. Stanford, or of the members of the Board of Managers, or even of the Civil Engineer who made up the estimates in regard to the cost and the time necessary to build this railroad. I have been too long interested in and acquainted with railroad movements to have much confidence in anybody's estimates. I rely rather upon practical results, as they are developed day by day. How often are we deceived by similar estimates of mining operations. For instance, we have a tunnel of a certain distance to run, and an engineer estimates that it will cost such an amount and can be completed within say six months; but we find in practice, notwithstanding the most careful estimates, that both the time and the expense may be doubled and in some cases quadrupled. It has been found that works of this nature would take six years to complete, and cost two hundred thousand dollars, which but a few years ago were estimated upon at about six months time and ten thousand dollars. Why, sir, this very railroad company, even in getting as far as Newcastle, has met with unforseen obstacles. Instead of mere soil or gravel they have had to cut through beds of cement, and a kind of rock as hard as iron, upsetting all calculations of the engineers. Instead of costing thirty or forty cents per yard for excavation, it has cost them perhaps ten dollars. If they have encountered such obstacles even on the level plains of the Sacramento Valley, where one would suppose that the earth could have been shoveled up and removed without the use of a pick, what may not they encounter in the mountains? In crossing those plains, only eight or ten inches down, they struck a hard pan which nothing but the pick could break up, and they had to spread over acres and acres of land on either side of the road in order to get material to make their embankments. That was something which had never entered into the calculations of the engineers. And as they cross the Sierra Nevada Mountains, which are practically a *terra incognita* to the engineers and the management, how do we know but they will find the hardest of rocks, perhaps of the iron stone, and trap types? How do we know but that instead of thirty cents it will cost them perhaps thirty dollars per yard for excavations?

I remember once driving a shaft, on which an engineer had estimated the cost at three dollars and a half per foot, but after I had driven it down about fourteen feet it cost me thirty-six dollars a foot. That exemplifies the uncertainty of an engineer's statements, whenever he goes down further than the eye can reach.

Now I remember when Mr. Crocker, who is now a contractor, but was then one of the managers of this railroad company, came to Virginia, and endeavored to interest me and others in this movement. He wanted me to take the books, and obtain subscriptions to the stock of the company in Virginia. I told him that where money was loaned out at from five to ten per cent. per month it was useless to attempt it, but he was hopeful about it and thought we could raise a million of money there. He went away not with the money in his pocket, but "with a flea in his ear." But what I was going to say in that connection is, that at that time the calculation was that this road would reach a point within fifty miles of Virginia inside of three years. I asked him "Have not you some doubt though about getting the money?" "Oh no," he said, "we can raise all the money we want in California." Now is Gov. Stanford's judgment any better at this time than Mr. Crocker's was then? He thought the road would reach within 50 miles of Virginia in three years, but two and a half years have elapsed, and the road has only been completed thirty-one miles from the starting-point, notwithstanding all the subsidies which have been granted by the United States, and California, from which they have not yet been able to obtain any money.

The Government of the United States has been very liberal, but its liberality does not build the road. It will donate forty-eight thousand dollars per mile from a point eight miles this side of Sacramento, and sixteen thousand dollars per mile from Sacramento to that point, so that when gentlemen reckon the forty-eight thousand dollars per mile of the first mortgage which they are authorized to make, and the forty-eight thousand dollars per mile of the aid from the United States government to follow that, they must count it from that point, eight miles this side of Sacramento. Now I ask, taking this forty-eight thousand dollars per mile of the first mortgage bonds, and the government subsidy for an equal amount of bonds, how much money do you suppose they will realise? And remember that the road must be built with money, not with bonds. They have not yet been able to realize anything. And why? Why, sir, the distinguished gentlemen from Sacramento, Gov. Stanford, in conversation with me last night, said if they had had money sufficient the road would have been completed to-day a distance of sixty miles, instead of only thirty-one miles, and I have no doubt of it. I should not be surprised if the present courageous and hopeful management of this gigantic enterprise should fall beneath its pressure, and that it should pass into other hands to secure its completion.

They may find their means inadequate to carry the road through. It may exhaust all their resources, and the expense be so much greater than they had ever anticipated that they will be forced to give it up. That has been the history of many railroads. The first party undertaking the railroad lost money by it. Then the second party came in and lost by it, and then the third party went in, and perhaps by the very "skin of his teeth" was able to weather the cape, and complete the road. And we should not be surprised if this enterprise should have the same history. I tell you, Mr. President, it is a gigantic undertaking, which may well appall the hearts of the most energetic and hopeful. I am pleased to find that there are men in our country so hopeful and so energetic that they are willing to risk their all in prosecuting this work. They are laying a foundation, which will have the effect of encouraging others to invest their all in it, and then a third party may come in, and ultimately this great and grand work of all the centuries shall be completed. And, Mr. President, just in proportion as the expense and the difficulties to be surmounted threaten to delay that great work, just in that proportion do I, for one, feel bound to encourage everybody to enter into it, and give it aid. We are too poor to delay the work. If we make no provision for it here the day may come when this Constitution will have to be altered by reason of the pressure upon the State for the want of that railroad, so that the people may give their votes to aid in its construction. I hope therefore that we shall not undertake to pronounce to-day in regard to the future. I hope that we shall not decide that our knowledge is so great, that we are so wise, that our minds penetrate so deeply into the future, that we know more than those who are to come after us ever can know, and therefore we tie up their hands, and say that they shall not expend their own money for their own benefit, or for the benefit of the State. I ask gentlemen who propose to do this thing to pause and reflect. If you are going to make a prohibition, and that is the specific question before us, I ask you to pause ere you put down the brakes to arrest the momentum of the people in favor of this grand work of the future. Do not believe every enthusiastic man who comes before you, or whom you meet in the street, or who has an interest in the completion of this work, and thinks that it is going to be done in such or such a time, or at such or such an estimated cost. I told the Convention the other day that I thought it would take six or eight years at least to build the road, and now after all that has been said upon this subject, I really believe it will take ten very long years to bring the railroad here, with all the aid which the company can bring to bear in advancing it.

Mr. DeLONG. Do I understand that my colleague believes so now?

Mr. COLLINS. I believe so now. I have had, I think, as much experience in railroad matters as Mr. Stanford has. I know as well as he has been the history of other railroads, and the difficulties which they have had to encounter and overcome. I know that whole bodies of stockholders have lost their all by it, and that other armies following have been raised also, and at last they have had to apply to State Legislatures to complete such works. I ask gentlemen, therefore, to pause ere they place their hands upon this work, or take such action that if the people in the future may do want to take hold and complete the work, they will have to change our action of to-day to enable them to do it.

Mr. EARL. I am one of those who favored the clause leaving to the people, or rather to the Legislature, subject to the sanction of the people, the right to donate or to pay the interest on these bonds. The proposition of my colleague (Mr. Fitch) now is, that the interest only shall be paid by the State. The opposition to that proposition is certainly ingenious, and the facts and figures presented in opposition to it are certainly very ingeniously arrayed. I would not be regarded as saying almost too much, I would say that it savors of toll road opposition; at all events, it looks to me so. It seems to me strange that the younger portion of our representation here should oppose a measure like this, and certainly their opposition is not in accordance with what we generally imagine to be the young America style.

Mr. KENNEDY. I will state right here that I do not know three gentlemen in California who have anything to do with this railroad one way or the other.

Mr. DeLONG. I do not know of anybody who is opposed to the railroad unless it be the keepers of toll gates.

Mr. EARL. I think these gentlemen must have been talking with those parties then, very lately, and must have become impregnated with their sentiments. Now, sir, is this the only wise body which is ever to assemble in this Legislative hall? That is the question. Are we to legislate in this instrument, and say that the people shall not do this, and that, and the other thing? I consider that we are here only to establish the landmarks. The Legislatures which are to succeed us can tell better in future times what the necessities of the State require, than we can tell now. I had no doubt that my friend from Minnesota (Mr. Nourse) would oppose this measure—no doubt of it at all. But, sir, this is a matter of great importance, and one that is not to be made light of. We propose only to leave it to the Legislature, if they please, to pay the interest on these bonds, or if they think that would be the wiser course, to let it alone. Whatever they may do about it will be all right. Cannot we trust to our future Legislatures? Will not they know what are the interests of the people better than we do? Suppose, as has been suggested by my colleague, (Mr. Collins,) the construction of the road is retarded, which is almost invariably the case in such enterprises—suppose after they reach a certain point they are compelled to abandon it for want of means. Will not the aid of the State then be an advantage? These are the facts before us for our consideration. I was glad to hear Governor Stanford express the sanguine hopes which he entertained. I say there is no good reason why we should not donate this amount, or at least leave the Legislature to donate it as we have proposed to do.

I am opposed to leaving it indefinite as to the road which is to receive the aid, from the fact that that would be raising a doubt as to the ability of this company to carry the work forward, and in that way it would be aiding the opposition to the road. We ought to take hold, if we do take hold at all, of one road. If there were two railroads in progress, both asking our aid, with equal advantages, which in point of fact is not the case, still I would say that the State should take hold of one, and not of both, because it is certain that only one road will ever be built. As I remarked the other day, I should not be willing to restrict the road to the expenditure of money within the State. I would go beyond Snow Tent to meet them, and aid them to reach the State line, and then the road will be a paying institution. From that point forward, with the aid they already have, the road will be built beyond any question. Once it gets that far, there will be help afforded within this State, by stock subscriptions. It would be demonstrated then that investments in the enterprise would be paying investments, and men with money would come forward liberally. Once the road reaches our State line I would consider it an accomplished fact, for then the great obstructions will all have been overcome.

Now, sir, in relation to this enormous sum of two hundred and ten thousand dollars a year which we would have to pay for interest, if the Legislature provides for the payment of the interest on the full amount of bonds—one gentleman has said it would amount to the enormous sum of four millions of dollars, but we do not provide that the Legislature shall pay interest on three millions, nor on one million, nor on one hundred dollars. We leave that entirely to those who are to come after us. They may restrict it to one thousand, or one million, or any other sum, or give nothing at all, just as they shall judge to be best. We do not legislate, nor do we say what the Legislature shall, or shall not do. Will gentlemen adopt such a narrow and contracted view as to refuse to leave the future of our State untrammelled? There are, as I said before, others in the State whose wisdom is as great as ours, and who, I hope and believe, will know what is for the interest of the State better than we do. How is this money to be paid? Not necessarily in gold pieces, as some gentlemen seem to think. If the Government currency should stand as it is,

or even in a much better position, the expense to the people will not be great. If we authorise the Legislature to grant this aid they may grant it in the currency of the country, and that would decrease the amount, in the present condition of the currency, nearly one half. But, as one gentleman who preceded me has said, this aid cannot be given within one year from this time at the least. We are not proposing now to issue the bonds, but only to authorise the Legislature to pay the interest on bonds of the railroad company, and those payments would be made gradually. We would be making payments from year to year, and not launching out at once into a large expenditure. While we were making the payments from time to time, we should be receiving all the time more and more of the benefits to be derived from the railroad. Even when the road reaches Dutch Flat, who doubts that it will be of enormous value to this community, and if we can get it to Crystal Peak, or even nearly to that point, it will be worth more to the State than the interest on this whole three millions of dollars. I hope the Convention will be controlled by liberal views and not by the narrow, contracted views of those who are interested in toll-roads and other interests which must necessarily go down whenever the railroad is built. There are no doubt large interests in this Territory represented by those who have invested their money in toll-roads. Such institutions are now a necessity to us, but that is nevertheless no reason why we should endeavor to check this work which is of so much importance to our whole community.

I indulge the hope, and have for months past, that we shall have the railroad here inside of three years. I think it may be done, notwithstanding the difficulties to be overcome, and I hope it will be done, even in less time. I notice that, as I was reported the other day, I was made to say that there was sufficient freight in Storey County alone to build the road over the mountains. I think I did not so state. My idea was that there was sufficient freight there to pay for building a road from Virginia to Washoe. It is well known that we are paying enormous and ruinous amounts of money, for freights. A large proportion of the wealth extracted from our mines in Storey County goes in that way. But if the road is once built it will immediately check that expenditure, and this will be an enormous advantage to us. See, too, what a vast benefit it will be to Humboldt County, and the Reese River region, and the other remote portions of the Territory! We should look not only to the interests of this immediate vicinity, but to the interests of Humboldt and Reese River, as well. Lumber is now worth there four hundred dollars a thousand—just think of that!—while we get it here for forty or fifty dollars a thousand. We do not feel the want of a railroad as they do, and I think if I lived in that portion of the Territory I should feel almost indignant at those gentlemen who wish to restrict and hamper the progress of this great work.

Mr. McCLINTON. I feel somewhat "narrow and contracted," as the gentleman last on the floor says, particularly about the financial regions, and I would certainly oppose, in this Convention, anything that should contemplate the immediate appropriation, by the first Legislature, under our State Constitution, or any action by them that should necessitate the immediate payment by the people of any such amount as two hundred and ten thousand dollars a year, in interest upon the bonds of the State. I would oppose the issuance of the bonds of the State, or any other action that should require that payment to be made, for the reason that we have scarcely sufficient resources at the present time, even to support a State Government, and to raise an annual tax for the first years of our life as a new State of two hundred and ten thousand dollars, or any considerable portion of that amount, in addition to the State expenses, would be an impossibility. The question with us simply is, "To be or not to be." Are we to be taxed more than we can bear, more than we can possibly raise, for this object, or are we to adopt such a course of policy, and incorporate such a provision into this Constitution, as will leave it in our power to aid the construction of this road to the extent of our ability, and at such times as we shall be able to do it without injuring the credit of the State? I am in favor, I want it distinctly understood, of aiding this road to the extent of our ability, and the only question is, are we able to do it or are we not? I do not believe we are able at the present time, in addition to sustaining the expenses of a State Government, to pay annually two hundred and ten thousand dollars. It will be as much as we can do to support our State Government, even upon the most economical basis on which we can frame this fundamental law. I think this section, as it was first proposed to be amended, would be amply sufficient. I believe we need go no further, even for the sake of an indorsement of the road. I should have no objection to making the section apply to the Central Pacific Railroad by name, and if we do that it will certainly be an ample indorsement of the road. If that will be of any benefit to the Company, or any aid to them in negotiating their bonds in the money markets of New York, or London or Paris, I am willing they should have the benefit of that indorsement. But I am not willing to provide that we shall pledge ourselves to give any direct and immediate aid to the road, when I cannot see that we have the resources to meet the demands which may be made against us.

Mr. NOURSE. I should hardly have troubled the Convention upon this matter now, as many things which I should like to have said have been anticipated by gentlemen who have spoken before me, but that the novel views of the gentlemen from Storey behind me (Mr.

fact) are so absolutely startling on one point that they seem to call for some reply. I refer to his announcement that wisdom is not to die with this Convention. [Laughter.] I think that has not been suggested before, and we would hardly be just to ourselves if we did not consider that startling fact. Now I think on the whole the gentleman is probably right. I think on the whole that there will be Legislatures hereafter as wise as this Convention is. I presume there have been in other States Legislatures quite as wise as the Conventions which framed their several State Constitutions. And Mr. President, in every Constitution that ever was framed, the great work has been to restrict the power of the Legislature.

Mr. TOZER. [interrupting.] I hope the discussion will be confined by the President closely to the question before the Convention. If it is allowed to take so wide a range as it has taken heretofore, it will prevent us from commencing our labors before next fall.

Mr. NOURSE. I hope so too. Does the gentleman see any symptoms to the contrary in my remarks? [Laughter.] I think I have not wandered from the question.

The PRESIDENT. The question is on the motion of the gentleman from Storey (Mr. Fitch) to recommit with instructions. The Chair hopes the gentleman from Washoe will confine himself to that.

Mr. NOURSE. The gentleman will, if he knows himself.

The PRESIDENT. There is a latitude of debate allowed in Committee of the Whole, which is not permitted by the rules in the Convention.

Mr. NOURSE. I do not ask any latitude; I ask simply the privilege of meeting the question on the ground of the objections which have been raised. The objection urged is, that by the article as it now stands, we prohibit the Legislature from doing so and so, and that the Legislature is likely to be as wise as we are; and it is upon the propriety of so restricting the Legislature that I am speaking now, or about to proceed to speak. Does the gentleman from Storey make any objection to that? If so, I do not think it makes the slightest difference.

The PRESIDENT. The gentleman will proceed.

Mr. NOURSE. Now, sir, is it or is it not the province of the Constitution to restrict or tie up the Legislature in any respect? If not, what do you mean in this first article by providing that "the right of trial by jury shall be secured to all, and remain inviolate forever?" Are not the Legislature to be as wise as we? Why not let them fix it all up by passing laws establishing the right of trial by jury, without our interfering with it. Why provide that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State?" Is not the Legislature to come after us going to be as wise as we? We provide that the privilege of the writ of habeas corpus shall not be suspended except in certain specified cases, but is not the Legislature to come after us likely to be as wise as we? Is wisdom to die with us? Why not leave all these things with the Legislature? We do not leave them with the Legislature because the province of a Constitution is to restrict legislative powers, which otherwise would be unlimited. And we propose to restrict the power of the State to incur debts, which would otherwise be unlimited. Is not that done by every State constitution in the United States? When we do this we do not assume any unwarranted powers or prerogatives. We put in the Constitution what we think is a wise and judicious restriction, upon the people, and upon the Legislature, and if the people do not like it they will reject it. We do not determine the matter absolutely. It goes from us as a simple recommendation, and the people are to adopt the Constitution or to reject it as they please. No one assumes to settle the matter until the people shall vote on the Constitution.

Now there is another original point, which was made by the gentleman from Lander, (Mr. Warwick,) and that is that railroads are a benefit, and tend to develop the resources of a country. I do not know, however, as that is altogether original.

Mr. WARWICK. Allow me to interrupt the gentleman a moment.

Mr. NOURSE. I would rather not give way.

Mr. WARWICK. The gentleman shall not place me in a false position.

The PRESIDENT. The gentleman from Washoe declines to yield the floor.

Mr. NOURSE. I do not think I have misrepresented the gentleman in any respect. I think that no man is more enthusiastically desirous of seeing a railroad constructed across these Sierras, or of seeing a railroad built in this Territory, and through this Territory, than I am. We are all in favor of that, and we must be fools, or worse than fools, if we do not desire it. And it is simply upon the question, whether this action, or proposed action, if it shall prevail—if we reject this amendment by which we refuse to restrict the Legislature—will or will not hinder the railroad in its construction, that we are to argue this matter.

Now I am opposed, as I was in the first place, to all grants of aid by the State, because I believe the State is, or will be, in no condition to make such grants. I believe it will not help the railroad at all to make any grant. I was overruled in that view, however, and there was a clause adopted which seemed to meet the approbation of a majority of the Convention, allowing the State to lend its aid, within our own limits. Now an attempt is made to change that provision, and to make the aid of the State take the form of an absolute payment of interest, instead of a loan. I think the clause as it stands does not state whether it shall be a loan

on a gift. If I recollect rightly, under that provision the Legislature would have the power either to lend or to donate money to the railroad company, to be expended in the State. As I understand it, it is now proposed that instead of that the State shall pay for twenty years the interest, at seven per cent. on the bonds of the company for three millions of dollars, to be expended wherever the company please.

I need not go through all the figures which gentlemen have presented here; I do not want to take up the time of the Convention in that way, but I wish to say a few words upon the propriety and necessity of the State's making this donation. Gentlemen say that the State should pay the interest on those bonds, because it will strengthen the railroad company in the market, and it is upon that theory that the amendment of the gentleman from Storey (Mr. Fitch) is moved and advocated. This aid, then, it is proposed, shall take the form of the payment of the interest upon the first mortgage bonds of the company. Now these first mortgage bonds, to the extent of forty-eight thousand dollars a mile, except for the first seven or eight miles, are to be based on the whole property of the road, of which the thirty-one miles now built, without any aid whatever, constitutes a part, as well as the money laid out in addition for the iron and rolling stock for sixty miles more. Then the road has the subsequent aid of the United States to fall back upon, to the amount of forty-eight thousand dollars a mile in the bonds of the United States. Am I not correct? I wish to look at this matter just as if I were a capitalist—which is not a supposable case, perhaps—and application were made to me to loan money on a building already partly built. Good progress has been made on the building, and I am asked to loan, say ten thousand dollars upon it, with full and ample security that besides the work already done, ten thousand dollars more shall be expended upon that building, after my money is laid out. Can there be any better security than that? Now if this donation of interest gives credit to the bonds, it is to that extent a help to the road; but can the strength which they already have be increased? What more can be asked, when the railroad company has thirty-one miles already completed, and the whole of the rolling stock and iron for sixty miles provided, with forty-eight thousand dollars per mile from the Government of the United States in prospect, to say nothing of the liberal donations of land, and the aid from the State of California, and the various counties in that State, nor of the paying business which is to be carried on over that road from the very first, and in regard to which, we are told that the freight business alone pays twelve millions of dollars a year.

Mr. FITCH. That is the freight business with teams; the prices will be reduced by the railroad.

Mr. NOURSE. I know—but if that is the case now, if with teams hauling all our freight it amounts to twelve millions a year, will not the amount of freight be increased when it is brought by the railroad, so as to make the business larger in the aggregate? The railroad may reduce the rates of freight, from two and a half, and sometimes ten cents a pound, the prices now paid, to a cent a pound, and the gentleman from Storey (Mr. Collins) will testify to the fact that the amount of freight to be transported will multiply and increase ten-fold. That is the experience of every railroad. While the railroad will reduce the prices of freight only one-fourth on the cost per pound, yet the aggregate amount will certainly increase ten-fold. But suppose the freight only increases in amount in the same ratio as it is reduced in price, still will not the business of the road pay when it will be doing a freight business amounting to twelve millions per annum? The experience of railroads all the world over is, that fifty per cent. of the gross amount received for freight is net profit. But suppose it takes on this road three-fourths of the receipts for freights to pay expenses. There is no reason, certainly, why we should estimate it higher than that, although gentlemen say that it is going to be a hard road to run because it has heavy grades, of a hundred and five feet to the mile, and sharp curves of five hundred feet radius. It may be that for these reasons the cost of running the road will be greater; but by fixing the price at one cent per pound they will receive an enormous price for freight, as compared with the rates of railroads in the east, and therefore it seems to me that the proportion between the gross receipts and the net profits will be about what they are on the eastern roads. At any rate, they will have a net profit of four or five millions of dollars a year, and that, too, upon a road which is not to cost more than fifteen or twenty millions.

Now with such a showing as to the profits of the road, with such a security for this one mortgage, with the other loans and donations on the top of that, with the payment of the interest on one million and a half by the State of California for twenty years, when the road is completed for thirty-one miles, and all the land given by the United States, and the agreement by the United States to pay that large amount per mile, with the interest on the loan absolutely a gift, can it be possible that this poor little State can add one particle of credit to the bonds of the company in any money market in the world? Will not their credit be established surely without our aid, or our guarantee? I believe that our guarantee, even if it were perfectly good, would not help the road at all; and with our guarantee, so doubtful in its character as it necessarily must be, can there be any question that it would be a mere form, which would be of no service whatever to the railroad? And if it is proposed that instead of a guarantee, we are to go on and absolutely

pay this interest, then comes up the other fact that the resources of the railroad company, as has been abundantly shown, are ample to build the road without our aid, while we are in fact utterly unable to donate anything to that company. It seems to me that in any view, whether it be to help the road by a gift outright, or with a view to giving credit to the bonds of the company, we should be merely going through a farce if we were to make this donation.

But then gentlemen say, "Why not let the Legislature do it? Why not leave it to the discretion of the Legislature?" Because we are here, as I have stated already, to restrict the Legislature. That is the object of a State Constitution. We are opposed to giving it, and if we can learn anything by experience we know that if it is allowed to be done by the Legislature, it will be done. I cannot call to mind, in all the long list of cases where there has been referred to the people of a State a proposition to loan the State credit to an enterprise of this kind, one single instance where the people have voted it down. There may be some cases in counties where it comes home to people's pockets more directly, and where they are better able to realize it—there may be some cases like that where such questions have been voted down—but I do not know of any, and I never heard of any that I now recollect of; while on the other hand I do know of many cases where such questions have been carried.

Under these circumstances I protest against the discredit sought to be cast by the advocates of this amendment upon the President of this railroad company. One of two things is true—either those railroad men are competent, or they ought not to be trusted. I am disposed to believe that Governor Stanford is reliable, and that his associates are reliable, and I protest against the gentleman from Storey, (Mr. Collins,) attempting to cast discredit upon Governor Stanford's statements and conclusions here. I think, upon more mature reflection, that the vote of thanks which was passed to him, and which I thought at the time was absurd, was amply due to him. I think we ought to be grateful to him, and I think we should trust to his statements. He knows best in relation to the condition of the railroad, and relying upon his showing, I say that that company is infinitely better able to pay the interest on our bonds than we are to pay the interest on theirs.

Mr. WARWICK. I rise to a question of privilege. I believe since the assembling of this Convention, there has been no gentleman on this floor who in his communications with his fellow members has exercised more courtesy than I have. On all occasions I have avoided that low scurrility and contemptible personality which is calculated to provoke retort. On no occasion, during debate, however exciting the matter, or however interested I might have been, have I ever indulged, I think, in any personal allusion which could possibly hurt the feelings of anybody. Neither have I attempted to place anybody in a false position by misstating his language or misrepresenting him in any particular. But the gentleman who preceded me, (Mr. Nourse,) did take occasion to represent me as having employed language which I never did use.

Mr. NOURSE. If the gentleman will allow me—I did not pretend to say precisely what was the language of the gentleman. I stated only what I understood to be the substance of his remarks, and I stated that that was what I understood. But if the gentleman did not say, or thinks he did not say, what I understood him to say, then I certainly have no comment to make upon it, and I will cheerfully withdraw any comment I may have made. I will leave it to him to say whether I did not state that that was what I understood him to say—that is, to argue, or to give reasons to show why railroads are desirable. That is certainly what I understood.

Mr. WARWICK. Sir, it is not so much the gentleman's matter as his manner—not addressed to me alone, but to others. Scarcely ever does he rise here to speak but that in a dictatorial and offensive manner he wounds the feelings of some gentleman.

The PRESIDENT. The Chair thinks the gentleman from Lander is transgressing his question of privilege by making reference to any offense the gentleman from Washoe may have given to other members.

Mr. WARWICK. It is not alone on this occasion—and I will confine it to myself entirely—but on an occasion previously, the gentleman used such language that I felt as if I could scarcely keep my seat.

Mr. NOURSE. I call for specifications—or rather, I call the gentleman to order. I do not wish to be assailed in this manner.

The PRESIDENT. The Chair thinks the gentleman from Lander is transcending the privileges of debate, in referring to a general matter of complaint without specifications. He cannot be permitted to arraign the general conduct of a member.

Mr. WARWICK. Well, inasmuch as it bears upon this particular matter—and I will merely refer to matters personal to myself—I only take occasion to request that that gentleman, when he undertakes to reply to me, will confine himself to facts, lest I be compelled to use stronger language in regard to him than I have used this morning.

Mr. NOURSE. I call the gentleman to order. I am not here to be bullied and threatened, and I ask the Chair if it is to be allowed?

The PRESIDENT. The Chair thinks the gentleman from Lander has transcended the bounds of good order, as he must be aware. He will endeavor to confine himself within the bounds of legitimacy in his arguments or remarks.

Mr. WARWICK. Then I will come to order, but I have to say that although I have been in

two legislative bodies, and passed through several heated debates, I do not know as I ever was placed in such a position as the gentleman from Washoe attempted to place me in this morning.

Mr. CHAPIN. Mr. President, I propose to occupy only a moment of the time of the Convention.

Mr. NOURSE [interrupting.] I wish to say a word in response to the gentleman from Lander, if the gentleman from Storey will allow me.

Mr. CHAPIN. Certainly.

Mr. NOURSE. I wish to say that towards the gentleman from Lander I have entertained and do entertain none but the kindest feelings, and I do not know a gentleman on the floor towards whom I do not entertain such feelings. And I challenge any man in this Convention to point out one discourteous word of mine towards that gentleman, or any other. But a gentleman, and his arguments, are two very different things, and I claim the privilege, as other gentlemen claim it, when an argument, or what is put forth as such, seems to me to be absurd, unreasonable or illogical, to attack it in those respects. I claim the right and privilege, and if I cannot have it I do not want to be here, to place such an argument in its proper light. I submit to the Convention whether I have not taken that course, and if gentlemen use arguments which in their nature are susceptible to ridicule the fault is not mine. If there is any fault of manner in me that seems to be disrespectful to that gentleman, or to any other gentleman, I am sorry for it. I know that frequently men have faults of style, of which they are not themselves aware. Now I have been charged here, from day to day, with being actuated by motives which, as often as I disavowed them, were nevertheless charged upon me again. But when I was assailed as to my motives, when I was charged with interested motives in relation to toll-roads, I did not fling back in return "railroad influence!" Have I charged railroad influence upon any man? Have I made a single disrespectful allusion to the gentleman from Lander, or any other gentleman, that he should take offense at? If so, I have not been aware of it. I claim the right, however, and it seems to me that if you deny that you had better give up all discussion, to speak of the arguments of gentlemen in the manner they seem to me to deserve. In regard to gentlemen themselves, it is a very different matter. I have taunted no man and indulged in no flings against any man intentionally.

Mr. CHAPIN. If these personal matters are done with, I will proceed. It seems to me that the views of gentlemen have changed somewhat, since the statements which Governor Stanford made here the other day, and I am free to confess, for myself, that if I had as full confidence as some gentlemen seem to have in the realization of all the funds necessary to be provided for the prosecution of this great work, I doubt very much whether I would vote to aid it, if the question were now to be referred to the people, for such an appropriation as we propose here to authorize. But I agree with my colleague from Storey (Mr. Fitch) that there is a great deal of doubt cast over the question whether or not those expectations will be realized. I do not believe it. And now I simply want to state that I believe sincerely we cannot afford to put into the Constitution here a clause which shall prohibit the people from ever considering any aid to the Pacific Railroad, if they wish to do it. The amount specified here I know seems to be large, but that can be modified before it is submitted to the people, if we put in no imperative language, providing that it shall be so much, and no more. But even in regard to this amount of two hundred and ten thousand dollars a year, though a large amount, yet we must remember that these are other large figures which we are now compelled to face, month after month, and year after year, and there is no escape for us. Why, sir, that two hundred and ten thousand dollars will barely pay our teamsters' wages for one month. It is estimated that we have three thousand teamsters now engaged in bringing our freights and supplies across the mountains, and if you estimate their wages at an average of seventy dollars per month it just covers this amount of two hundred and ten thousand dollars. That is what we are paying out every month instead of every year. Sir, I say it is beyond all question that we cannot afford to continue to pay the immense sums which we are now paying for freights, and therefore I want to leave the question to the wisdom of the Legislature hereafter. Let them decide it, when they see how the great work progresses; and if it does not progress, if they see they are likely to be disappointed as to its completion, if there is failure on the right hand and on the left, and no prospect of any company providing us with this great work of necessity without our aid, why, sir, I say do not tie up the hands of the people, so that they cannot come in and render that aid. I say we cannot afford to do it. Leave the question open, and leave the people free to act when that necessity which knows no law begins to press upon them. Leave it open to the Legislature, and then, if a few years hence they see fit to make the appropriation to the amount of the trifling sum which we are now paying for teamsters' wages from month to month, let them do so. I say do not tie up their hands.

Mr. DUNNE. As this is an important question, I will state the reasons why I support the amendment of the gentleman from Storey (Mr. Fitch.) But first, one word in regard to the argument of the gentleman from Washoe, (Mr. Nourse,) which I think proves more for our side than any argument he would have been willing to make if he had reflected a moment. He says the universal experience has been that the people of a State always adopt any proposition for granting aid to a railroad enter-

ple. I ask if that is not the best argument in the world that the people are in favor of granting such aid, and if they are in favor of it, why should they not have the right to grant it? It is because I believe in leaving some liberty to the people that I would favor this amendment. There are ample restrictions and safeguards thrown around it which will prevent the granting of any aid injudiciously.

Many have thought that the declarations made here by Governor Stanford, the President of the Central Pacific Railroad Company, were very unwise and injudicious concerning the interest of that railroad; but I know the Governor very well, and have the highest appreciation of his financial ability and skill, and I believe that the position he assumed here was a masterly stroke of policy. His company is now on the eve of negotiating a loan of five millions of dollars, and what greater guarantee of credit could there be, or in what way could he bolster up the credit of that company, if it needed it, more than by the almost unheard-of course of coming before such a body as this constitutional Convention and saying: "Gentlemen, we are not anxious for your three millions." From the aid of this State they could derive no practical benefit for a year, or perhaps eighteen months to come, but by taking that position they give a credit to their bonds which is of more advantage to them than any aid which they could hope to derive from us. What gentleman is there here who, if he contemplated taking an interest in this road, would not do it much more willingly after having that assurance than before, and much more willingly than he would with all the guarantees and assurances of the new State without it?

The argument that the Legislature is easily influenced to grant franchises and special privileges, does not apply to the Legislature which is to come after us in this case, because a mere majority of a quorum is not sufficient. We require, in the first place, a majority of the whole number elected, then upon that is the veto power of the Governor, which it would require a vote of two-thirds of all the members elected to overcome. And upon that again is the veto power of the people, which will require a majority of the people of the State to approve the law. Now, I say, if a majority of the people, after a fair discussion of the question, come to the conclusion that it is for their interest to grant this aid, they should have the right to grant it.

The hopes of the managers of this railroad may prove to be fallacious, or it may be that the whole project will fall through in the terrific crisis which our nation is now undergoing. If such an event should happen, if this company should become embarrassed and unable to proceed, what would be our position if we do not adopt this provision? We should find ourselves with our hands tied, and no way left open by which we could extend aid to that enterprise, which is to us of such vital importance. Therefore, in view of all possible contingencies, I think the people should have the power intrusted to them to grant this aid if they find it necessary.

Mr. FITCH. Inasmuch as the hour of two o'clock this afternoon has been assigned for the consideration of the subject of the taxation of the mines, and it is now nearly twelve o'clock, I suggest that we come to a vote on this question.

Mr. TOZER. I have but a word or two to say, and will detain the Convention only a moment. After a lengthy discussion of this question a day or two since, upon the same clause, and after a full and perfect interchange of sentiments and arguments in relation to the subject, this Convention came fully to the conclusion to grant this aid, or rather to authorize the people of this State to pay their money, if they should desire to do so, in aid of the construction of the Pacific Railroad. We stand, therefore, in my judgment, committed to that policy. But, sir, since that time Governor Stanford, the President of that road, has appeared before us, and has cast, as it seems to me, some light on this subject. In view of that new light it now appears desirable, to some of us at least, that our action on the subject should be changed, and that the section which we then adopted should be somewhat altered, amended, and corrected. I think, for one, that the action which we then took was such as would be calculated more to injure than to advance the interests of the first and only road likely to be built, or likely ever to aid in advancing our interests. Such being the case, sir, I would only say briefly further that I shall favor the motion of my colleague, (Mr. Fitch,) and I really hope that this Convention, without arguing or discussing this question to any greater length, will at once come to a vote, and let the section be referred to the committee with directions to amend it in accordance with the written instructions, and then let the Convention pass upon it, and have done with the subject. I do not believe, Mr. President, that any further argument in this case, either from myself or from those who are much more able to intelligently and wisely argue the question, will add anything whatever to the intelligence and understanding of this Convention on the subject. I think, sir, that we are as well prepared now, or will be as well prepared immediately on receiving the report of the committee to be appointed, to take a vote upon the question involved, as we would be if the members of the Convention should again and again express the identical opinions which they have expressed so often heretofore, upon the general policy of railroads, and upon the advantages of railroads, and upon the policy of the people of this State granting, under this constitutional provision, their aid to the construction of this particular railroad. I think I can safely say that if such questions as this are to be considered, and reconsidered, by the Convention, and

the Committee of the Whole, months instead of weeks must elapse before our labors can be brought to a close, and I shall insist by every means I can employ, within the bounds of parliamentary usage, that all this debate shall be cut short. Gentlemen have spoken well, but the subject is exhausted, and further debate is useless.

Mr. BROSNAN. I desire to ask a question. In case of the issuance of these bonds, or the authorizing of their issuance, if this railroad company should fail absolutely, as suggested or expressed by my colleague, (Mr. Collins,) to complete this work, or if another company succeeding them should fail to do so, in what condition would the State be placed? Would not the State be still liable to pay the money to the holders of the bonds?

Mr. TOZER. It seems to me that if the Legislature, and the people indorsing their action, should grant the aid, and the railroad company should then fail to fulfil its part of the contract, the State could then refuse to fulfil her part, and in that event we should have to pay only the interest on the bonds already issued.

Mr. BROSNAN. But what is the legal liability of the State in that respect?

Mr. TOZER. The gentleman can tell better than I can. I should not think the State would be bound to pay any further than bonds had been already executed. It seems to me that is the common-sense view of the case. As to the policy of this Constitutional Convention authorizing the people of the State to vote on this question, I have not the least doubt in the world. I hope the provision will be made in some way authorizing the people, in the future, to vote upon it, and to grant this aid, if in their judgment it seems best.

Mr. PARKER. Inasmuch as our clock is stopped I move the previous question.

The PRESIDENT. The Chair thinks that is hardly necessary.

Mr. FITCH. I should like to offer an amendment which I think will be readily accepted. It is to add at the end of the amendment which I have heretofore proposed, the following: "Nor until said road shall have been completed and in running order for a distance of sixty miles eastward from Sacramento."

Mr. CROSMAN. I suggest that there should be a provision for a special election when it is submitted to the people.

Mr. KENNEDY. I call the attention of the Chair to the fact that the question is first on striking out and next on inserting.

The PRESIDENT. The vote will be first taken on striking out.

Mr. EARL. But the motion is not to strike out; if we strike it out we may lose all.

Mr. FITCH. I understand that, but if we can not have the amendment which I offer, I would as soon let it all be stricken out as any way.

Mr. EARL. Very well.

The PRESIDENT. Have the ayes and noes been demanded?

Mr. FITCH. I do not call for the ayes and noes on striking out.

Mr. NOURSE. I do.

Mr. BANKS. The first proposition is to strike out, I understand, and after that there may be a majority in favor of inserting. I want to know if it will be in order to move to strike out and insert other words after both questions pending are voted down?

Mr. NOURSE. Sufficient to the day is the evil thereof.

Mr. BANKS. There may be a majority in favor of inserting. What I want to know is, can we move to insert other language?

Mr. FITCH. My understanding is, that if the motion to strike out is adopted and the motion to insert rejected, then the section will be in a condition to entertain any other motion to insert.

The PRESIDENT. On some occasions the Chair has decided in advance what effect a motion would have, but I think it is quite enough to decide intricate questions when they are actually presented for consideration. I do not deem it necessary at this time.

Mr. BANKS. The Chair is quite right; we will take our chances.

The question was taken by yeas and nays on so much of the instructions as directed the striking out of that portion of the section which related to a railroad, and the vote resulted—yeas, 28; nays, none—as follows:

Yeas—Messrs. Banks, Belden, Brady, Brosnan, Chapin, Collins, Crawford, DeLong, Dunne, Earl, Fitch, Folsom, Gibson, Hawley, Hovey, Hudson, Kennedy, Lockwood, Mason, McClinton, Nourse, Parker, Sharpstein, Tuolumne, Tozer, Warwick, Wetherill, and Mr. President—28.

Nays—none.

The PRESIDENT. The instructions, so far as striking out is concerned, are adopted.

Mr. FITCH. I hope no gentleman has any intention now to move an adjournment. [Laughter.] I suppose the next question is on inserting my amendment.

Mr. DELONG. I cannot exactly understand this amendment.

The SECRETARY read the amendment as modified by Mr. Fitch, as follows:

"*Provided*, That the State may provide for the payment of the interest upon bonds of the Central Pacific Railroad Company to an amount not exceeding three millions of dollars for a length of time not exceeding twenty years, at a rate of interest not exceeding seven per cent. per annum, in aid of the construction of the Central Pacific Railroad across the Sierra Nevada Mountains; but no law to provide for the payment of interest as aforesaid shall be effective unless sanctioned by a vote of the people, nor until said road shall have been completed and in running order for a distance of sixty miles eastward from Sacramento."

Mr. NOURSE. The hour for our recess has arrived, I believe.

The PRESIDENT. It lacks five minutes by the clock. [Laughter.]

Mr. DELONG. I do not wish to occupy the time. I only want to say that I hope this amendment will be voted down.

Mr. FITCH and others demanded the yeas and nays.

The question was taken by yeas and nays upon so much of the instructions as directed the committee to insert the words proposed by Mr. Fitch, and the vote was—yeas, 12; nays, 17—as follows:

Yeas—Messrs. Banks, Brosman, Chapin, Collins, Crosman, Dunne, Earl, Hawley, Hovey, Town, Warwick, and Wetherill—12.

Nays—Messrs. Belden, Brady, Crawford, DeLong, Fitch, Folsom, Gibson, Hudson, Kennedy, Lockwood, Mason, McClinton, Mourse, Parker, Sturtevant, Taggart, and Mr. President—17.

So the instructions in relation to inserting were not agreed to.

During the voting—

Mr. BROSMAN said: I would like to say one word in explanation of my vote. I shall vote in the affirmative on this question, solely for the reason that the people, in my judgment, ought to have something to say on the subject.

Mr. WARWICK. That's it.

Mr. CROSMAN. I wish to state, by way of explanation, something similar to what my colleague, Mr. Brosman, has stated. I have an amendment which I would prefer to this, but I shall vote "aye" on this question.

Mr. HAWLEY. I vote "aye" for the reason assigned by the gentleman from Storey (Mr. Brosman,) although the proposition does not exactly meet with my approbation, individually.

Mr. MASON. I have sought an opportunity to express my views, and I wish now to explain the manner in which I vote, because I do not want to go before my constituents misunderstood. I vote "no," because I believe an appropriation of this kind would be a greater curse upon our State than any benefit which could be derived from it. I do not propose to support a monopoly, or to give to one company more than I would to another. I would be in favor of having three railroads across the mountains, if we could, but at any rate I am now and forever opposed to a vast monopoly.

Mr. McCLINTON. I vote "no," for the reason that I believe the amendment of the gentleman from Storey (Mr. Fitch) is not as good as the section was before. And I will state incidentally that I do not believe, if it is voted down, that the people will in consequence be robbed of a chance to vote on the subject.

Mr. FITCH. I change my vote from "aye" to "no," for the purpose of moving a reconsideration.

The result having been announced, as above stated,

Mr. FITCH. I give notice that I will move a reconsideration of this vote.

The hour for recess having passed, the President, at twenty minutes past twelve o'clock, declared the Convention at recess until two o'clock, P. M.

AFTERNOON SESSION.

The Convention met at two o'clock, P. M., and was called to order by the President.

PACIFIC RAILROAD.

Mr. FITCH. I ask unanimous leave to withdraw the notice of reconsideration of the vote by which the Convention this morning refused to adopt my amendment to Section 9 of Article VIII, in reference to the Pacific Railroad clause.

The PRESIDENT. The notice is withdrawn, if there is no objection.

Mr. DELONG. The gentleman has my consent. [Laughter.]

TAXATION.

The PRESIDENT. The special order for two o'clock is the consideration of Article X, entitled Taxation, and the question before the Convention is on the adoption of the report of the Committee of the Whole.

Mr. DELONG. I call for the ayes and noes.

Mr. LOCKWOOD. I move a call of the House.

The question was taken on the motion for a call of the House and it was agreed to.

The roll was called and thirty-one members responded to their names, those who failed to respond being Messrs. Ball, Frisell, Jones, Morse, Proctor, Warwick, Wellington, and Williams.

Mr. WARWICK soon after appeared, and after a brief delay, on motion of

Mr. LOCKWOOD, further proceedings under the call of the House were dispensed with.

The PRESIDENT. The question before the Convention is, the adoption of the report of the Committee of the Whole, upon Article X of the Constitution, entitled Taxation.

Mr. TOZER. I move that the report of the committee be adopted.

Mr. NOURSE. Is it in order to amend the report? I desire to move to amend the section as reported, and will not that motion take precedence of the motion to adopt?

Mr. DELONG. You cannot amend the report of the committee. The committee alone can amend its report, and the question now comes on the adoption of the report of the committee.

The PRESIDENT. This, in effect, is a recommendation from the Committee of the Whole, and amendments to that will be in order.

Mr. NOURSE. Then I move an amendment to the section, as reported.

Mr. DELONG. We cannot amend the report of the committee; that is the property solely of the committee. The Convention can only adopt or reject it, as they please. This article, as it stands, is reported back with a recommendation that certain lines in the original be stricken out, and, as a matter of course, those lines are not stricken out unless the Convention adopt the report, and then, as soon as they are stricken out, by the adoption of the report, any further amendments would be legitimate and in order. I submit that that is a correct view of the matter.

Mr. CROSMAN. Would it not be in order to move to recommit, and have further action in Committee of the Whole? I desire to offer a further amendment.

The PRESIDENT. The Chair is under the impression that it would not be in order.

After considerable discussion upon the question of order involved—

The PRESIDENT decided that the vote must first be taken upon concurring in the report of the Committee of the Whole, and that then, whether the report should be adopted or rejected, the article would be open to further amendment, or to be recommitted.

The SECRETARY read the amendment reported from the Committee of the Whole, which was to strike out the words "including mines and mining property."

Mr. EARL. I shall vote for striking out, because we wish to insert other words.

Mr. DELONG. I call for the ayes and noes.

The question was taken by yeas and nays, on agreeing to the amendment reported by the Committee of the Whole, and the vote was—yeas, 27; nays, 8—as follows:—

Yeas—Messrs. Banks, Belden, Brady, Brosnan, Clagett, Collins, Crosman, DeLong, Dunne, Earl, Fitch, Freeman, Hovey, Hudson, Kennedy, Kinkead, Lockwood, Logan, McGibbon, Murdock, Nourse, Sturtevant, Tomlinson, Tozer, Warwick, Wetherill, and Mr. President—27.

Nays—Messrs. Crawford, Gibson, Haines, Hayley, and Turner—5.

So the amendment striking out the words "including mines and mining property" was agreed to.

Before the result of the vote was announced—

Mr. HOVEY. With the consent of the Convention I would like to explain my vote. I am in favor of taxing the mines, but not as proposed by any amendment which I have yet seen. But I think this will leave it with the Legislature, in such a way that they can prescribe a proper mode of taxing the mines, and therefore I have voted aye.

Mr. KENNEDY. I have not explained my vote, and do not wish to give my reasons in detail at this time, but simply to state, that I have voted aye on this motion, with the expectation of making further amendments.

The PRESIDENT. As explanations seem to be the order, I will explain my action, so far as that section is concerned. I am desirous of incorporating my amendment, and I therefore vote aye, because my amendment could not otherwise be brought before the Convention.

The result of the vote having been announced as above stated—

Mr. NOURSE. Now I suppose my amendment is in order. It has been sent up to the desk, and I move its adoption.

The Secretary read the amendment, which substitutes for Section 1 the following:

SEC. 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation of all property, possessions, and possessory rights, excepting such only as may be exempted by law for municipal, educational, literary, scientific, religious, and charitable purposes.

Mr. NOURSE. I offer that amendment because I suppose it will meet the views of gentlemen, as they have been expressed here. The odious word "claims" is left out, because, as I understand it, it is offensive to some, and I suppose that will meet the views of gentlemen who disagree with me. I think I have shown a willingness to meet them fairly, by leaving out that word "claims." I ask for the ayes and noes on that amendment.

Mr. KENNEDY. Is a further amendment in order?

The PRESIDENT. It is.

Mr. BROSNAN. I would offer an amendment, if in order.

Mr. DELONG. Is not the President mistaken about a further amendment being in order?

The PRESIDENT. No, sir. The question is not on amending the section. The amendments proposed by the Committee of the Whole having been disposed of, now the section is open to any further amendments which may be offered.

Mr. KENNEDY. I am in order then, and I propose to change the original section, after the word "property," so that it shall read "all property, real, personal and mixed."

Mr. DELONG. And if that lacks any thing of a full description, I would suggest to put the words "chattels real" in there.

Mr. EARL. Does it still leave the word "personal?"

Mr. DELONG. Certainly. It says "real, personal and mixed."

Mr. KENNEDY. As I was too unwell yesterday to explain my vote, I wish to explain it at the present time. If I believed the legal proposition which either the President or the gentleman from Storey (Mr. DeLong) has advanced, that under this wording of the Constitution the mines could not be taxed, I should certainly have voted for the amendment of the gentleman from Ormsby (Mr. Johnson,) and against the amendment of the gentleman from Storey (Mr. Fitch;) but I believe that under this wording, no Legislature, I care not how elastic the consciences of its members may be, can avoid taxing the mines. But I am unwilling to have those words which have been stricken out—"including mines and mining property"—inserted, for the reason that I know we cannot explain to the miners of this Territory the legal definition or meaning of those words. When I voted for this clause in the Convention of last year, as I did, I certainly had no intention of voting for taxing a hole in the ground; yet when I went before my constituents, and urged the construction of that language which I believed to be the true one, I was met with this answer: "Under that clause we believe you will tax every hole in the ground, whether it is a mine or not, and for that reason we will vote against the Constitution." And, sir, it was really on account of those few words that that Constitution framed last year was defeated in our county. I think I know the views of my constituents, for I visited every precinct in our county during the canvass.

Now, sir, the gentleman from Storey (Mr. DeLong) says that all kinds of property are embraced in those two words, "real and personal;" but I differ with the gentleman, and deny that as a proposition of law. I contend that there are certain kinds of property which are not embraced in these two words—that there are such things as chattels real, which are neither real property nor personal property—and in the Constitution we should either stop at the word "property," or, if we attempt to define at all, we should define property as laid down by all the law writers—as "real, personal and mixed." I suppose I shall have liberty in speaking on this point to refer to the various amendments which have been offered. I am opposed to the amendment of my colleague (Mr. Crosman) which exempts all mines valued at less than one hundred dollars a foot, because, (although it was suggested by him as a bounty for mining,) it would be exempting too large an amount of property from taxation in this State. When a mine is worth a hundred dollars per foot there is too much money invested in it to justify its exemption, and we have not sufficient property within our limits to allow us to be as liberal as that.

Mr. CROSMAN. Will my colleague allow me to explain? So far as naming the amount of one hundred dollars a foot was concerned, I had no particular object in that. I merely named that sum because it is a round sum, and twenty or twenty-five dollars might be substituted.

Mr. KENNEDY. I would be opposed to an amendment of that kind, naming any figure.

The PRESIDENT. If there is no objection the gentleman will be permitted to proceed in his remarks, upon the general features of the various amendments, but it occurs to the Chair that strictly the question is upon the amendment which he has offered. It is difficult for the Chair to determine how closely members should be confined to the particular matter under consideration. ["Leave, leave!"]

Mr. GIBSON. Let them have as wide latitude as possible.

Mr. KENNEDY. I accept the leave of the Convention for two reasons: First, because I shall change my vote from what it was in the last Convention; and secondly, because I want an opportunity to explain my action in Committee of the Whole yesterday.

I have opposed an amendment exempting mines worth under five dollars per foot for this reason, that I do not wish to lay down peremptorily in the Constitution any particular method by which the mines shall be taxed. Now, Mr. President, this question of taxing the mines is comparatively a new question, so far our country is concerned. We have had but little experience in the matter in the United States, and consequently do not know the best method by which to derive revenue from mines. I wish therefore to leave that matter wholly to the Legislature. I have conversed with several men who have had some experience in the matter, and believe, with them, that the United States Government has fixed upon the best plan for deriving revenue from the mines, and that is to tax the bullion which is produced. But I am willing to leave that for the Legislature to decide, governed by future experience. I am willing to allow them to determine in what way they will derive a revenue from the mines. One argument advanced by the gentleman from Ormsby (Mr. Johnson,) was, that under the Enabling Act we could not tax possessory rights.

The PRESIDENT. I beg the gentleman's pardon; my argument was just the reverse. I said we could tax possessory rights, but not the mines directly as property, being owned by the United States.

Mr. KENNEDY. But I hold that the possessory right itself is property. The actual land itself of a mining claim may be property belonging to the United States, but the possessory right in and to that land, or the possessory right in that claim, is property, included within the three words which I have used in my amendment, and it can be reached in that way. It is either real property, or personal property, or—as I believe it really is—mixed property. Now, sir, I think the Legislature, under a provision like this, could reach that description of property. They can reach any kind of property.

There has also been an argument advanced here in respect to the Constitution of California, but it seems to me that that argument will not stand the test of examination. Gentlemen have said on this floor that the Legislature of that State have refused to tax mining property, although they have always had a similar provision to this in their Constitution. Now, in the first place, I do not admit the ground of that argument, and in the second place I believe that mining property in that State, until within the last two or three years at least, ought to have been free from taxation, and for this reason, that the mines there have consisted almost altogether of surface diggings, and no man could tell their value, because no man could have any data upon which to base his calculations. No man could say that one inch further than he had already gone, the dirt in those surface diggings would pay. But in this Territory mining property is of a different character. When a man finds a ledge which pays, he has certain data upon which to base a calculation that at a later day it will pay so much more. I do not deny that these data may lead a man to a wrong conclusion, and it frequently does, but he has nevertheless some rule to go upon. He has the experience of other mines and other countries to teach him that if rock at a certain depth pays so much, when he gets so much deeper it will pay more. He has something substantial to go upon. I never mined in California, but have had old Californians tell me their experience in turning up the dirt

there. There have been diggings which, judging from the first panful, promised enormous profits, and yet upon going six inches or a foot deeper they could not find any dirt that would pay. But with our mines the general rule is the reverse of that. We have something more substantial, but how best to get at it none of us can tell, for nobody knows what the rule will be hereafter. One gentleman tells us that the mines are being exhausted, but from what I know in regard to them, I should judge his view to be incorrect. Still I am willing to wait, and allow the Legislature, after further experience, to determine in what manner it is best to tax the mines—whether it is best to do it by levying a tax on the mines themselves, on the bullion, or on the proceeds, gross or net.

I would also call the attention of the Convention to one fact in regard to the Article in the California Constitution. It resembles ours in many respects, and yet gentlemen will see that it is materially different. Section 13 of Article XI of the California Constitution, reads thus:

"Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law; but assessors and collectors of town, county, and State taxes, shall be elected by the qualified electors of the district, county or town in which the property taxed for State, county or town purposes, is situated."

Now there may be, and often is, as legal gentlemen know, a peculiar construction put upon that word "all." I have known of two or three decisions in regard to that. But here we go further and define the several species of property, and require that every species shall be taxed, whether real property, personal property, or partaking of the character of both.

In regard to the amendment which was offered by the gentleman from Ormsby, (Mr. Johnson), I have two objections. I know that if you insert in this article the words "mines and mining property," or that other word—which to the popular idea is the same thing, to wit—"claims," you insert that which, to a large majority of our voters, will look as if you were legislating in your Constitution expressly against a class. That is my objection to the word "claims." In addition there is this further objection: I know what are the views of a majority of my constituents upon that very clause, for upon that clause, more than any other contained in the instrument, I have conversed with them, and they admit that that was what they most opposed.

The PRESIDENT. There is no amendment now before the Convention which embraces either the words "mines and mining property," or the word "claims."

Mr. KENNEDY. I understand that. The question, I believe, is upon my own amendment inserting the word "mixed," and changing the position of the word "and."

The PRESIDENT. The Chair supposed the gentleman was under a misapprehension as to the amendment pending.

Mr. KENNEDY. I say there is this further objection which I have to any other amendment than this, and that is my regard for the will of my constituents. I know that they are perfectly satisfied with this clause as it stands, with those words "mines and mining property" stricken out. I know that they will have no objection to the insertion of the word "mixed," when it is explained to them. But they do object, and I think it is a legitimate argument, to anything in the Constitution which seems to them to be—although it may not be in fact—legislating for the taxation of any peculiar class. And as I believe that this amendment will cover all the property in the State, whether it be mines, mills, agricultural lands, possessory rights, or whatever property a man may have, I shall vote for it, believing that it will suit the views of my constituents, believing that it will cover everything, and also believing that it is our true and only policy to leave it to the Legislature to decide in what way they can derive the most revenue from the mines.

Mr. DELONG. I desire to say only a few words on this subject. A question has arisen here as to whether or not the words "real and personal property" cover all kinds of property, and upon that proposition I find that I am disputed by various gentlemen, and more especially by the gentleman from Washoe (Mr. Nourse.) Now I wish to refer him, and to refer the Convention, in regard to that matter, first to Blackstone's Commentaries, in which, treating of property, the writer includes under the head of property, all kinds of property, real and personal. He says:

"The objects of dominion or property are things, so contra-distinguished from persons. And things are, by the law of England, distinguished into two kinds—things real and things personal. Things real are such as are permanent, fixed and immovable, which cannot be carried out of their places, as lands and tenements; things personal are goods, money, and all other movables, which may attend the owner's person wherever he thinks proper to go."

I will next read from Bouviere's Institutes, where it is plainly asserted that property is divided into two kinds—real and personal. But the author says:

"And sometimes property is composed of both personal and real, and is then called *mixed estate*."

It is nevertheless included in the term "personal and real property," for whatever portion of it is not personal must be real, and *vice versa*. He says:

"Things attached to the freehold as fixtures, are sometimes real and at other times personal; and things which are personal in their nature, as the keys of a house, are considered as real estate in consequence of their destination; other personal things become real, either by their accession or by the use to which they are applied. And things which are real become personal on being separated from the realty, as fruit, coal, &c."

Under the head of personal property he goes on to class chattels real and chattels personal, and treats of qualified property, also under the same general head, which he says is such as the possessor has only a qualified, limited, or special right to, as for example the beasts of the forest, but still it all comes within the general classification of personal property. Then again personal property is divided by this authority into things in possession, and things not in possession, or choses in action, as he makes a division, under the general head of "Things," of things corporeal and things incorporeal. These are only sub-divisions, which are made to classify the general subject, but the authority shows that really the terms "real" and "personal" cover the whole ground, and as I said in the outset embrace every possible description of property. This classification is made under the head of "Things," and these subdivisions are made throughout, but always under the heads of "real property" and "personal property," which embrace all classes and descriptions of property. Now that the word "mixed" is used here, too, I do not deny, but I say that mixed property is described by the terms "real" and "personal," because it is property of both kinds, like a chattel-real. A chattel is personal property, realty is real property, and a chattel-real is property that partakes of the nature of both. Now here is an illustration in Bouviere, under the head of "Mixed Property." I quote now from Bouviere's Law Dictionary:

"Mixed property is that kind of property which is not altogether real nor personal, but a compound of both. Heir-looms, tomb-stones, monuments in a church, and title-deeds to an estate are of this nature."

These things may have a fixed character, as a tombstone, or a monument, and yet it will be seen they are included by the terms real and personal. Again he says:

"Property is divided into real property and personal property."

And speaking of qualified property:

"A man has a qualified property in animals *feræ naturæ*, while they remain in his power," etc.

Now I turn to "personal property" and find this language:

"Personal property is the right or interest which a man has in things personal; it consists of things temporary and movable, and includes all subjects of property not of a freehold nature nor descendable to the heirs at law. Things of a movable nature, where a right can be had in them, are personal property, but some things movable are not the subjects of property, as light and air. Under the term personal property is also included some property which is in its nature immovable, distinguished by the name of chattels real, as an estate for years; and fixtures are sometimes classed among personal property."

And under the head of "Things" we have this:

"Things by the common law are divided into—1, things real, which are such as are permanent, fixed and immovable, and which cannot be carried from place to place; they are usually said to consist in lands, tenements and hereditaments. Things personal include not only things movable, but also something more, the whole of which is generally comprehended under the name of chattels. Chattels are distinguished into two kinds, namely, chattels real, and chattels personal."

Then referring to the word "chattels," the writer says:

"Chattels are personal or real chattels. Personal are such as belong immediately to the person of the man; chattels real are such as pertain not immediately to the person but to something by way of dependency, as a box with the title deeds of lands," etc.

Mr. FITCH. I rise to a point of order. I should not make it on my colleague but that in displaying his legal erudition he is speaking in the time of the gentleman from Lyon, (Mr. Kennedy.)

The PRESIDENT. No; the gentleman from Lyon had concluded.

Mr. DELONG. I was going to say only that I vote for this proposition, not because I believe there is any necessity for saying anything more than "real and personal," for I think there is no question but that it is unnecessary, but merely to show my sincerity in this matter, and that I do not wish to exclude from taxation even tomb-stones and title deeds. I vote for the amendment although mixed property is not even mentioned by Blackstone, because I am willing to have tomb-stones, monuments, title deeds and everything else taxed.

Mr. COLLINS. I shall vote against the amendment because I am a little suspicious of the arguments presented yesterday and to-day by my learned colleague (Mr. DeLong.) Yesterday, according to his argument, it was absolutely impossible, under the language of this section, to reach the mines, and upon the question being asked if the word "mixed" would add any strength to it, the reply was "none at at all." It is understood by him and others that it is impossible to reach the mines under the language in the section as adopted, or as it is now proposed to be amended by the gentleman from Lyon (Mr. Kennedy.) I suggested to the President, yesterday, that if that obnoxious word "claims" could be stricken out I would go for it, or I would support the section as it was adopted last night and reported to the Convention this morning. I would not object to that word "possessory" so that it would read, "all property, real, personal and possessory," etc., and I said in the discussion, that if it were amended in that way I certainly would go for it. I am not disposed, however, after spending three or four days upon the discussion, to leave this question still in a state of doubt and ambiguity.

Mr. DELONG. I will ask the gentleman if he will describe any property whatever that a man could be possessed of that is not either real, personal or mixed? If he can do so, then I will not object to incorporating the word "possessory," but otherwise I am opposed to it.

Mr. COLLINS. My colleague is admitted to be a lawyer of great erudition.

Mr. DELONG. Thank you.

Mr. COLLINS. And he pronounced the opinion yesterday evening that though the word "mixed" should be added, yet it would be impossible under this section to reach any mining property, on the surface or below it; and I think that assertion came from his heart.

Mr. DELONG. I guess my colleague must have misunderstood me. I claimed that you cannot reach mining claims, because they are the property of the General Government.

Mr. COLLINS. I understood the gentleman to say yesterday that by virtue of the Enabling Act—which has thrown such new light on the subject as to require us to adopt a different wording from that found in the old Constitution—the words "personal and real property," or even "personal, real and mixed," could not be construed so as to reach any property in the mines, or even upon the surface—that it could not be made to reach any possessory claim or even a house lot. It was contended that since the mines were upon the public domain, and were held under the United States, all the buildings and improvements would be carried with them, and therefore it would be impossible for the officers of the State Government to reach any species of property in order to tax it.

Mr. DELONG. My colleague is laboring under a very great mistake. I said this: that no matter what words were incorporated—whether we said "all property," or "all real and personal property," or whether we went further and said "mixed," "possessory," or any other description of property—if we incorporated any such language, we were nevertheless prohibited by the Enabling Act from taxing any land or property of the United States. I said that no matter what language we put in, we could not reach the Government property, and that the Government alone had the right of property in these lands. That is all I said.

Mr. COLLINS. I desire to see this matter now settled and arranged so clearly and definitely that our large holders of property on the surface, whether valuable house lots and ranches, or whatever else, shall know that by no construction of the wording of this instrument can they escape taxation. I want it so clearly worded, and its meaning so clearly brought out, that no species of property that the Legislature may fix upon can escape taxation. And, therefore, inasmuch as nearly all the property of our Territory consists of that kind of property which we derive from our possessory rights, I do think it but just to the ranch-holders, and the holders of property upon the surface, and in the mines also, that the words "possessory rights" should be incorporated in this section.

I said yesterday that I would like it very much if those small claim-holders, those poor men who are laboring to strike a ledge, or who are in pursuit of a mine, could be exempted. I should be glad if this Convention, in its wisdom, could provide some means whereby they might be exempted from taxation, not upon their mines, but rather on their hopes. I should be glad to see a provision by which those prospectors could be exempted, unless they hold claims which exceed a given value; for it is not a mine that a man has, until he strikes the mineral of which he is in pursuit. You cannot say that a tunnel or a shaft is a mine; and I would like to see it provided that those claims in which men are engaged in searching for mines shall not be taxed until they have arrived at a certain market value, not to exceed, for instance, one, three, five, or perhaps ten dollars a foot, as the wisdom of the Convention may determine. I regret that my friend from Humboldt (Mr. Banks) did not see fit to present that amendment, which he gave notice that he should offer it at a subsequent time.

Mr. BANKS. I am not in the habit of interrupting gentlemen, but I would like to be allowed to say here that no opportunity has yet been presented to offer that amendment. When I suggested it, I did so simply because there was no opportunity then to offer it, and I have not, since that time, had a chance to present it, although I have endeavored to do so. It will be offered, however, whenever there is an opportunity.

Mr. COLLINS. If the section can be amended so as to embrace the word "possessory," I shall support that, and I will vote for the amendment offered by the gentleman from Washoe (Mr. Nourse) if nothing better can be produced. I am in favor, however, of the amendment suggested by the gentleman from Humboldt, (Mr. Banks,) but I do protest against adopting any section in such a form that no two members of this Convention can be found, after our adjournment, who will be able to understand it in the same light.

Mr. WETHERILL. I did not come here for the purpose of occupying the time of the Convention, but I wish to say that yesterday the proposition was laid down here, that whether there was a ledge discovered or not, or whether a ledge existed or not, the mines should all be taxed. That was a broad and comprehensive proposition, and for one I am willing to meet it squarely. I do not wish to make it obligatory on the Legislature. I am willing to concede to the Legislature the right to tax or not to tax the mines—to leave that question entirely with the Legislature. I did intend to introduce a proposition here to make it imperative on the Legislature not to tax the mines one dime; but seeing the condition of the Convention, and the contrariety of sentiment prevailing in it, I forego that intention, and am willing now to leave it with the Legislature. Gentlemen have conceded so much as to strike out the provision directing and requiring the Legislature to tax mines and mining property. So far so good. But now they turn around and want to tax claims, leaving the language of the same import as before, to

ask that the Legislature shall tax the mines. Right there we take issue, and we might as well settle the issue upon that point at once.

Now if there has been any question thoroughly ventilated in this community, if there is any question that has been thoroughly discussed, here and elsewhere, it is this question of taxing the mines. Consequently all this long talk is entirely thrown away. I do not suppose there is a member in the Convention but has entirely and completely made up his mind on the subject, and we might just as well decide it at once. I want to see a State Government inaugurated, not for the sake of office, as perhaps some politicians desire it, but for the good of the community. I have asked for no office, either local or general, in this Territory. I am certainly free from that charge, and had I consulted my own feelings I would not have been here to-day. But I want to see a State Government organized, and I am as confident as I can be upon any question which we have yet passed upon, that no Constitution will be adopted by the people of this Territory with a clause in it making it imperative upon the Legislature to tax the mines. That is a proposition which cannot be doubted or denied. That was the very point upon which was based the condemnation of the old Constitution, in Esmeralda County, last fall. I was so situated that I could not well vote against the adoption of that Constitution, and it was with a feeling of deep regret that I saw it defeated. I was conscious at the time, and the result was sufficient to convince me of the fact, that the clause taxing the mines was the millstone which effectually bore us down, and prevented a State organization. And when I say that Esmeralda County is opposed to taxing the mines, I think I speak emphatically the sentiments and wishes of that county. Our interests in Esmeralda County are not alone in the mines. We are largely interested in agriculture, also, and of those engaged in agricultural pursuits at least three out of four will be found voting against taxing the mines.

We might as well meet this question plainly and fairly. Instead of introducing that prohibition which I had contemplated, providing that the mines shall not be taxed, my colleagues and myself are willing to meet the gentlemen on the other side half way. We are willing to leave it an open question in the Legislature, and let the Legislature in future time determine what taxation is necessary to support our State Government, in the event of the adoption of our Constitution. We can do no more than that, and we think that gentlemen are inconsiderate, if not ungrateful, when they ask us to put in here a peremptory mandate that the mines shall be taxed. If it is a foregone conclusion, we can only protest against it, for I do not wish to hurl back the threat, which has been made here, that if you do not engraft into the Constitution this or that particular thing we will vote it down. I say whether it is engrafted in the Constitution or not, I am in favor of the adoption of that Constitution which we may frame, believing that in its general features it will commend itself to the favorable regard of the people. The necessity for a State Government is apparent.

But this subject has been so completely ventilated that I do not propose to travel over the ground, or to attempt to handle those topics which have been so thoroughly and ably handled by others. Let us pursue the course which I have indicated. Let us leave this question to the Legislature. We are not framing a Constitution which shall only be for a day, or a week, or a month, but one which we hope, for a long time after its adoption, shall stand as the fundamental law of the State. We are not framing a Constitution for an old State, or for a State with a settled condition of things. The wheel of fortune rolls rapidly here, and we know not what a few weeks, or even a few days, may bring forth. The Legislature which is to assemble here should be allowed therefore to conform its action to the circumstances arising at the time. I say emphatically that in deference to the will of the people, and in view of all the safeguards which have been thrown around the future legislation of the State, we ought to leave this question to the Legislature; and beyond that we who represent Esmeralda County cannot go one inch.

Mr. BROSNAN. I have only a few words to say. It seems to me that we have arrived at a point in the discussion and adjustment of this question where we ought to determine it at once. For the life of me I cannot see any substantial difference between the views of gentlemen on this question or between the amendments as they stand before the members of this Convention, nor why one gentleman puts in the word "possessory" and another says he desires to use instead the words "mixed property." In every essential particular, in my judgment, both amendments are the same. For myself, and I wish to express my views in all candor, I am free to say that I do not know of any distinction, in import or meaning, between the two modes of expression. I see no tangible difference between the one and the other. If my judgment is not clouded I understand what is meant by "personal, real and mixed property," and the phrase includes all kinds, and every species of property known either in law or to the common observer. So far as possessory rights are concerned they are included in that category, and it seems to me that it can do no harm to put that word in. It is merely a pleonasm, and therefore, so far as I am concerned, I am willing to vote for the one amendment or for the other, for I consider that one is tantamount to the other.

Mr. HAINES. Although the discussion of this question has taken a very wide range, and as the gentleman from Esmeralda (Mr. Wetherill) says there is probably not a member that does not thoroughly understand the magnitude

of it, yet it seems to me that no two members agree as to the expression, or the term they wish to use, in order to exclude mines and mining property from taxation. Now, if any language can be incorporated which will cover the ground better than that which we have already employed, it will certainly suit me quite as well, and I will give it a hearty support and cooperation. But when lawyers and doctors disagree I do not know that citizens from the rural districts should be expected to be prepared to say whether or not they have the substance of what they seek, unless they have the language so drawn that we can all read and understand it alike.

Mr. BROSNAN. I do not understand that gentlemen disagree in regard to the identity of meaning of those terms.

The PRESIDENT. I certainly disagree. I do not think that a possessory claim is included in the term "mixed property."

Mr. DeLONG. Is it not included in the term "personal property" then?

The PRESIDENT. I say that under our Enabling Act not a single foot of property, surface or mining, could be taxed, if the section were left with simply those three words, "real, personal, and mixed," if the word possessory is not also included.

Mr. HAINES. Now the gentleman from Esmeralda (Mr. Wetherill) is very anxious for a State organization. And why? The reason is very apparent; they want a judicial head. They want more courts, or more judges, in order to clear off that calendar which now contains some six or seven hundred cases. As things now are they expect to have to wait three or four years before the present litigation in respect to mining claims can be brought to a close. These gentlemen want a State organization, but at the same time they tell us that if we tax the mines they will defeat it three to one. Now, I ask how do they expect to sustain a State Government, or carry it on, without having all property taxed, and mining property included? Because nine-tenths of all our property consists in possessory rights to the mines.

Mr. WETHERILL. I will answer the gentleman. There are now twenty-five millions of property in the Territory, exclusive of property in the mines, or the proceeds of the mines. Now tax the proceeds of mines if you choose, and that is a large item in addition. The progress of the Territory has been very rapid indeed thus far, and moreover we base the action of this Convention upon the progress which we are likely to make in the future. We are only about three years old now, and look at the remarkable ratio of our progress! If I thought that ratio of progress was not to continue in the future, I should certainly think we had better never have met here. But look at the progress we have made and are still making. Before the people are called upon to pay the increased taxation which has been suggested, the amount of property in the State will be doubled or perhaps even quadrupled, and I think the property in the State, aside from the mines, will be ample to support a State Government, when the time comes for its collection.

Mr. HAINES. And I say if we do not tax the mines then we must arrive at the conclusion that this whole affair is premature, because we have not the necessary amount of taxable property, outside of the mines, within the limits of this Territory, to carry on or to provide the requisite means to sustain a State Government. And I do not believe that any man in this Convention is so insane as to say we are prepared to sustain it with the small amount of property we have outside of our possessory property in the mines, without creating a burden so enormous that men could not possibly live under it. I do not think it is at all practicable.

Mr. WETHERILL. I regret that I have not the figures and estimates here by which to show the difference between the expense of a Territorial Government and the expense of a State Government; but I should like to see such an estimate, and I do not think that the difference would be found to be very great. I know that certainly some of the positions which have been taken here on that subject will not hold good. For instance, the cost of the erection of public buildings has been adverted to, but I do not suppose it is the intention of anybody to erect a capitol at the present time, and in the old Constitution it was provided specially that none should be erected for a term of six years. Moreover, the proposed aid to the Pacific Railroad was there estimated as a part of the State expenses, but I submit that that is wholly an unfair argument. And there would be still another curtailment of expenses, under the judicial system which we propose to establish.

Mr. DeLONG. Our courts are to be self-sustaining.

Mr. WETHERILL. That is correct, and if that is done I think the expenses of the State Government will scarcely exceed those of the Territorial Government, or at any rate the difference will arise mainly by virtue of our not receiving twenty-five or thirty thousand dollars a year from the General Government. We would have to pay that ourselves, and I put it to every man on the floor whether he is not willing to do that. Even if we should continue under the Territorial Government, are not we willing to relieve the Federal Government, in these times, of that expense? I say that is a duty which we owe to ourselves and to our common country.

Mr. HAINES. From my experience in California, I am not prepared to agree with the gentleman in regard to the non-increase of taxation, provided we change our condition to that of a State Government. I believe that a consequent increase of expense and necessarily of taxation also, is pretty generally and satisfactorily understood by most of the members of the Convention. We expect that our taxes will be increased quite one half at least, and I

shall they will be double what they are to-day the moment we emerge from the condition of a Territory into that of a State. The experience of California has been enough, I think, to warn every man here not to embark in so grave an enterprise without first preparing the ways and means. During the argument we have heard here from time to time, the California mines have been referred to, but the fact has been fully brought out that the California mines have never been taxed. Now we do know with certainty that had the mines of California been taxed, had a provision been engrafted in the California Constitution at an early day taxing her mines, she would not to-day be groaning under her present burden. But what was the reason of this? The people of California were sufficiently represented. Members from mining counties did not feel the responsibility of legislation, since the burden of the Government did not fall upon them or their constituents, but they were ready and eager to legislate and to vote away money freely which the people of other counties had to pay. And the Legislature lavished appropriations upon every frivolous thing, and squandered the people's money by millions.

Now I propose to make the language of this provision so plain that no man can be deceived. I do not propose to mystify it, so that my constituents may not vote against it. Tell the truth and do not attempt to mystify and deceive the people. Do not engraft into the Constitution any language other than what you mean, and tell the people that it means the same thing. Do not adopt a provision making one class of the people pay all the taxes, and tell them at the same time that you have done no such thing. It was argued in the other Convention, I remember, that with a slight change of the language we could tax the mines, and at the same time make the miners believe they would not be taxed. I do not want this Convention to take such a course as that. I hope all the amendments will be voted down, and then either let us accept the clause as adopted by the former Convention as a whole, or else let us go home satisfied that we do not want a Constitution, and be prepared to stump our respective counties against it.

[Mr. DaLone in the Chair.]

Mr. JOHNSON. I do not wish to take up the time, but upon the invitation of the gentleman from Esmeralda, (Mr. Wetherill,) I wish to present a few figures in relation to the expenses of a State Government. I have several times made estimates upon this subject, both subsequent to the adjournment of the former Convention, and while the result of its labors was still pending before the people, in the canvass, and here, since we have so far proceeded as to foreshadow the material results of our own labors; and the conclusion I have arrived at is, that this State Government can be administered for about the sum of three hundred thousand dollars a year, and that upon any sum less than that we cannot reasonably calculate to support it. I exclude from the calculation which I have made here, any computation of interest on the Pacific Railroad or other railroad bonds, and also any consideration of the cost of the erection of public buildings. And I think if gentlemen will take the frame-work of the Constitution, so far as we have it outlined, and the general ideas we have already as to the salaries of officers, and the various other expenses of the State, they will find that the sum I have named is not far from an approximate estimate of the expense of a State Government. Now it is said that we have in the Territory about twenty-five millions of property, exclusive of mining property, or the proceeds of the mines. I am willing to take that as the basis of an estimate—and whilst I concede that there has been considerable decrease in the taxable value of property in some portions of the Territory, I am willing also to concede that there has been an increase in other portions, to such an extent as to about keep pace with such diminution. I therefore take it as a basis, that in the approaching year there will be twenty-five millions of property, other than the proceeds of mines, and mining property in any sense, subject to taxation. Now I think it is not an under estimate to place the proceeds of the mines, if that were the basis for their taxation, independent of their value, at fifteen millions more. I do not suppose, in view of all the surroundings, that any gentleman, taking it from the present month to the first day of July next, would place the proceeds of the mines higher than that figure. Some gentlemen may possibly think it should be higher—and certainly none desire it to be so more than I do—but such is my opinion judging from the proceeds of last year. Among the reasons why I entertain this opinion regarding the subject of the proceeds, is this: I know, from my own personal knowledge, that in the county of Storey many of the mines will greatly increase in production over the last year; but the policy which has been inaugurated, by which the Gould and Curry mine is to be worked hereafter, will certainly result in a very great diminution of the amount of the proceeds of that mine.

It is now proposed not to impoverish the mine, as they say, but to work it more gradually, and we know that there are about twenty mills which have heretofore been working ores from that mine, that are now supplied with ores from other mines. All things considered, I think the most favorable estimate that can be made of the gross proceeds of the mines for the coming year is about fifteen millions of dollars. I believe about twelve millions of dollars was the amount last year, and if I am not correct in that I will be obliged to any gentleman who will correct me. Then these fifteen millions of dollars added to the twenty-five millions of dollars of other property, making the increase in some instances an off-set for the

distinction in others, gives us an aggregate of forty millions of taxable property, exclusive of the taxation of the mines themselves, but including the same species of property which was taxed last year—that is, all the ranches and possessory rights to lands confessedly belonging to the Government—all the personal possessions of such lands, even if we are not inhibited by the terms of the Enabling Act from taxing them, and I declare that I really believe if we leave out of this clause those words "possessory claims," and simply incorporate the word "mines," I have grave doubts as to whether we have the right to tax them. But, I say, allowing that they are to be taxed, and the mines are not, but only the proceeds of the mines, then we have a basis of forty millions of dollars upon which to levy a tax for the support of the State Government. Now, gentlemen who are familiar with the matter of the collection of the revenue know that there are expenses incidental to such collection, and losses from delinquents. I think from my own observation and experience, and it has been somewhat considerable in that respect, that it is not an over-estimate to say that twenty-five per cent. should be deducted for delinquencies and the expenses of collection; so that, having forty millions as a basis of revenue, including the proceeds of the mines, and the expenses of the government being three hundred thousand dollars, to raise the requisite amount, deducting the twenty-five per cent. for delinquents and expense of collection, we shall have to levy a tax amounting to four hundred thousand dollars, which gives us the three hundred thousand dollars, after allowing for delinquencies, and paying the expenses of collection. That is to say, we have necessarily to levy a tax of one hundred cents on each one hundred dollars.

Now on the other hand, how are we situated financially, as the Territorial laws stand at present? We have a taxable property, an estimate of which has already been given, and the expense of our Territorial Government is also pretty well ascertained and understood. But in addition to that, by the laws of the Territory, as we have been before informed, and as we all know, all the property in the Territory is taxed, including the mines. There is no law of Congress to the contrary, and the tax laws of the Territory now in force bear witness that all the mines have to be assessed and taxed under our present Territorial system. We have therefore under the Territorial organization the large revenue to be derived from this class of property, which in my judgment may be estimated at not less than forty millions of dollars more—that is, in addition to the property other than mining property, in the Territory. We have therefore sixty-five millions of dollars as the basis upon which to raise a revenue for the Territorial Government, as against forty millions of dollars as the basis from which to raise a revenue to support a State Government, the expense being at the same time very greatly increased for the support of the State Government. Now if we remain under our Territorial form of government, a tax of thirty cents on the one hundred dollars (and it was reduced from sixty to thirty cents by the last Legislature, so that now we have a tax of only thirty cents on the one hundred dollars,) in the opinion of the best financiers, of those who are most conversant with the state of our affairs, will be amply sufficient to bear the expenses of our Territorial Government, and to pay the accruing interest on the public debt.

Therefore we have presented this question to go before the people, whether they will have a State Government, with a tax of one dollar on each one hundred dollars, or a Territorial Government which only requires a tax of thirty cents on each one hundred dollars. This I regard as a fair statement of the question involved in the propositions before the Convention, and I only refer to this matter in order that we may be able in advance to see the issue which we shall have to meet—those of us who advocate a State Government—when we go before the people. Upon this basis, either our friends or opponents of a State Government, we have, as frank and sincere men, to submit it to the people, that with a State Government they will be required to pay a tax of one hundred cents on the one hundred dollars, against a tax of only thirty cents on the one hundred dollars, under the Territorial Government.

Mr. WARWICK. Before the gentleman sits down, will he have the kindness to state the items upon which he estimates the aggregate expenses of the State Government? He states that the aggregate expense will be three hundred thousand dollars; will he give us the items that go to make up that amount?

Mr. JOHNSON. I have not the figures with me, but I have them at my office. I did intend to present them yesterday, but I felt somewhat as if I should be trespassing too much on the time of the Convention, and I forgot to bring them with me this morning.

Mr. WARWICK. There can be no subject of greater interest to the Convention than this, and I desire at least, for the information of the Convention, to have those items presented. I ask the gentleman to give us the larger items, at least. It is proposed that the judiciary shall be self-sustaining, and I would like to know if the expense of the judiciary does not go to make up some of this account, and if therefore that item of expense does not go to sustain the argument of the gentleman upon the subject which we are discussing.

Mr. JOHNSON. I believe I have heard that word self-sustaining used on only two occasions before, in relation to the judiciary. I heard it used once in the Judiciary Committee, and once by the gentleman who now occupies the Chair, (Mr. DeLong.) With those exceptions I have heard of no action, either by the Judiciary Committee, or by anybody else, by which it was proposed to make the judiciary self-sustaining.

The PRESIDENT *pro tem.* (Mr. DeLONG.) Was it not proposed that there should be a lawyer's fee or a court fee, so as to make the litigants pay the expense of the judiciary—imposing a fee, to be paid into the salary fund for the support of the judges?

Mr. JOHNSON. I think I heard that subject remarked upon by the gentleman himself, in the Committee on the Judiciary, but the matter, if I recollect aright, was not discussed, or if it was, then it was whilst I was not present. There was but one occasion on which the proposition to make the judiciary self-sustaining was seriously discussed. I did hear the gentleman now in the Chair make a remark to that effect in the Judiciary Committee, but it never assumed so serious a phase as to be the subject of discussion.

The PRESIDENT *pro tem.* Because we never reached that part of the Article.

Mr. JOHNSON. That may be true, but I am speaking only of the action which has been taken thus far by the Convention, or which has been taken thus far by the Committee on the Judiciary. And taking that action for a guide, as well as the action of the last Convention, I see nothing to foreshadow the idea of making the judiciary self-sustaining. And here let me remark that there was some such suggestion in the last Convention—and in referring to that I know I am out of order, but I speak only by leave—but it seemed to meet with universal reprobation, in the committee in which it was brought up.

Mr. BROSNAN. Not in the committee of which I was a member.

Mr. JOHNSON. No, sir; it was in the Legislative Committee. An objection was raised by Judge Ralston, I remember, that satisfied me as well as the rest of the committee. The proposition was simply this, that the Courts should be open to all men, without any taxation whatever; that the law was sufficiently burdensome at the best, and that all parties, whether rich or poor, should be allowed to come into the courts and not, upon crossing the threshold, be met with a rebuff, or denied permission to enter unless they could pay a large sum of money as the price of obtaining justice. I was opposed to that proposition then, and I should be opposed to it now, and if it had been seriously entertained in the Judiciary Committee, I should certainly have given expression to the views I now entertain. I think we should impose no tax upon parties litigant, but that the courts should be supported by a taxation of all the property of the State alike, as is done in other States, leaving the courts open and free to all. I should certainly be opposed to imposing any tax upon the litigants, in order to make the courts self-sustaining.

The PRESIDENT *pro tem.* But there never has been any objection raised in California to the mode of sustaining the two District Courts in San Francisco, the judges of which have been paid by the small amounts paid in as fees by litigants.

Mr. JOHNSON. I do not know how that may be; it was some years since I was in California.

Mr. BROSNAN. It is the established rule in San Francisco; they pay a fee of three dollars, I think.

The PRESIDENT *pro tem.* I believe that is the rule all over the State.

Mr. JOHNSON. It would take a much larger amount, to support our judiciary, than could possibly be raised, I conceive, from such a fee. I have made an estimate of the expense of sustaining our judiciary as we propose to establish it. The exact figures I have forgotten, but if it is to be supported by a tax on the counties then it would diminish the State expenses to that extent, but at the same time it adds to the county expenses, so that it is as broad as it is long, because the people in the end have it to pay, and it makes no material difference to them whether they pay it as a State or a county tax. I apprehend that the Supreme Court judges will receive a salary of not less than seven or eight thousand dollars; I have heard no expression of opinion on this subject from members of the Convention, but such is my own view. But when you come to add to that the salaries of the District Judges in the several districts, some ten or eleven of which we propose to establish, I believe it will be a heavy burthen either upon the counties or upon the State, and, as I before remarked, it is just as broad as it is long in either case, being an expense and charge to the people.

I think if gentlemen will themselves make the estimate, they will find that they cannot fall short of this amount of three hundred thousand dollars for the expenses of the State Government, allowing for all reasonable expenditures, and there will be some for which no items presented in an estimate could provide. I have been compelled in an official relation to make estimates heretofore in the State of California, and I know that in some cases the estimates were exceeded by actual expenditures perhaps two or three hundred thousand dollars, and I cannot think that any proper estimate can be made showing that less than three hundred thousand dollars will be necessary to pay the expenses of our State Government for one year, even if it is economically administered. But taking that as a basis—and I present these views to give the Convention a basis merely—even if the taxation of the State is limited by the Convention, we shall have to go before the people and defend the instrument upon this hypothesis, that the taxation, even for State purposes, is to be enhanced from thirty to one hundred cents on the hundred dollars.

Mr. HAWLEY. I wish to ask one question. I was making this same calculation a few months ago, for myself, and I found that taking everything into the account, the taxable property of the State only amounts to twenty-five millions of dollars. Is not that the entire valuation now, if we do not tax the mines?

Mr. JOHNSON. I add the gross proceeds of the mines, which makes it forty millions. Of course if that is not done we have only twenty-five millions.

Mr. HAINES. Does the gentleman from Ormsby base his calculations upon the last assessment?

Mr. JOHNSON. Yes, sir.

Mr. HAINES. The gentleman certainly does not believe that it will amount to as much another year?

Mr. JOHNSON. Yes, sir. Whilst it is well understood, and generally conceded, that in some counties the assessments of this year will fall short of last year, I am willing, for the sake of the argument, to admit that the increase in other portions of the Territory will equal that decrease, so that I believe it is not an unjust or unfair estimate, founded upon all the facts and surroundings, that we have a basis of twenty-five millions, exclusive of mining property. I think that would be a just and proper estimate, and upon that basis I arrive at these conclusions.

There is another matter which I desire to make myself understood upon, if I have not been heretofore. I find that some members have been disposed to regard my remarks in the light of a menace, to the effect that unless they should adopt the views which I have advocated I would exert my influence against the adoption of the Constitution, and a State organization. Now I have said only this, that I did not desire a State Government which would not be self-sustaining, and I would be an ingrate to the people who sent me here, and false to the teachings of my past life, if I should dare to go before the people and advocate the adoption of a State Government, unless it could be shown that we can support that government, by a limited increase or addition to the present rates of taxation, in order to obtain the great advantages which we all freely admit are to be derived from a State Government. I wish to be understood when I assert that if we frame and adopt here a State Constitution under which the taxation of the people shall be equal, and by which the people are not excessively taxed, I shall be in favor of it; but if, on the contrary, the people are to be unequally, or excessively taxed by its provisions, I cannot ask them to vote for the instrument. That is as far as I can go, as an individual, and I think in that I speak the sentiments of a large proportion of the people of this Territory.

Mr. BROSNAN. And of the Convention too.

Mr. JOHNSON. I think so. We have come here from all parts of the Territory, and, to use the language which I did in the last campaign, we have come here for a noble purpose, without reward, or hope of reward, but honestly to represent the constituents who have sent us here. Under these circumstances I do not think it can be imputed to any man that, for the sake of personal ends, or for the purpose of securing certain advantages, he would foist a government upon the people which would be burdensome or grievous. I have formed too high an estimate of each and every member of the Convention to believe any such thing, and I do not desire any remarks which I have made, or may offer, to be by any possibility construed into a suspicion of an imputation that any man here is actuated by any such ignoble motive or purpose. On the contrary, I attribute to every member the holier and nobler purpose of desiring to construct the framework of a State Government which shall be the best that can be devised, and which shall exist after we shall cease to be.

Such are my views, and it is in advocacy of the opinions which I and other members entertain, that I have deemed it necessary to urge upon the Convention the propriety, yea the necessity, of taxing all property alike. I think the facts and figures within the reach of every member of the Convention, as well as those I have presented, or any other basis of calculation which any gentleman can present, must prove the necessity of pursuing that course.

Mr. EARL. Do I understand that we have an amendment now pending?

The PRESIDENT *pro tem.* Yes, sir; and then an amendment to an amendment.

[The PRESIDENT in the Chair.]

The Secretary read the amendments pending, the question being first on the amendment offered by Mr. Kennedy to the amendment by Mr. Nourse, striking out the words "possessory and possessory rights," and inserting the words "real, personal, and mixed," so that the section would read:

Sec. 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and mixed, except such only as may be exempt by law for municipal, educational, literary, scientific, religious or charitable purposes.

Mr. EARL. I shall vote against the amendment although if I were certain that we should not have a certain other amendment I would not. As it is, I shall vote against it.

The question was taken by yeas and nays on Mr. Kennedy's amendment, and the vote was—yeas, 8; nays, 24—as follows:

Yeas—Messrs. Brosnan, DeLong, Hovey, Hudson, Kennedy, Mason, McClinton, and Parker—8.

Nays—Messrs. Banks, Bobbs, Brady, Bronson, Chapin, Collins, Crawford, Dunne, Earl, Fitch, Fuller, Gibson, Haines, Hawley, Kinkead, Lockwood, Murdock, Nourse, Sturtevant, Tagliabue, Toner, Warwick, Wetherill, and Mr. President—24.

Mr. CHAPIN. I now move to amend the amendment offered by the gentleman from Washoe (Mr. Nourse,) by substituting the following:

Sec. 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real, personal, and possessory, according to its true value in money, excepting such property as may be exempted by law for municipal, educational, literary, scientific,

collection or distribution purposes; provided, that in the taxation of mines only the proceeds thereof shall be taxed.

I have only a very few remarks to make upon the amendment. Quite a number of gentlemen who have submitted and advocated other propositions and amendments, have admitted that they believed this to be the true system of deriving revenue from the mines, and the one that would hereafter have to be adopted. This substitute leaves it open for the Legislature to tax the bullion, if they please, or by putting the property-owners, or the owners of mines, under oath, or in any other way they see fit, to get at the correct proceeds of the mines. The General Government has seen proper to adopt this same method, and I fully believe that it is the true method for us to adopt here. Then we relieve entirely the prospecting miners from that question which we know would become so heavy a burden upon them, and which would raise up an opposition to our Constitution so powerful that it would be certain to defeat it. We relieve these miners, and at the same time destroy that opposition. Now I am willing to come in and join with other gentlemen in supporting a proposition of this kind, and so have the question settled in our fundamental law, in such a way that there can be no misunderstanding about it. Gentlemen have complained very much here about the uncertainty of the various propositions which have been submitted before the Convention, and have stated that a year or two might elapse before the various questions involved would be settled by the Supreme Court, so as to know whether the mines were to be taxed or not, and so as to know what constitutes a mine, and whether or not mines are to be considered taxable property, etc. But this amendment would settle the whole question at once. I am in favor of adopting something which will be definite and conclusive, and therefore I hope this amendment will prevail.

Mr. BELDEN. Does the gentleman mean to provide for taxing the net or the gross proceeds of the mines?

Mr. CHAPIN. The amendment leaves that to the Legislature entirely; that is my idea.

Mr. FITCH. I have a proposition to make and not a speech. I propose as these various amendments are offered, to be voted up, or voted down, that we take the ayes and noes and settle the matter one way or the other, without further debate. We have debated this subject two days now, and I think that is long enough.

The PRESIDENT. Then I suggest that it would perhaps be better to withdraw these amendments and vote first on the one offered by the gentleman from Washoe (Mr. Nourse.)

Mr. CHAPIN. No, sir; I want the ayes and noes on this amendment.

Mr. NOURSE. I ask for a division of the question.

Mr. BANES. I like the style of that amendment, and its spirit, and in fact it meets with my approbation entirely, but I would be glad if the gentleman from Storey would withdraw it for the present, provided it is understood that we come to a vote upon that amendment ultimately. I am willing to extend the courtesy to the gentleman from Washoe (Mr. Nourse) to have his proposition voted upon first. It will be observed that his proposition, if adopted, will not prevent the adoption of the amendment of the gentleman from Storey, which is a substitute. I hope the gentleman will withdraw it, and give an opportunity to vote on the amendment, upon which it is desired by the gentleman from Washoe that the sense of the Convention be tested.

Mr. COLLINS. I hope this amendment will be voted down. I do not like it, either in its principle or in its practice. I think that when we do lay down the foundation for collecting the revenue of the State Government, we should do so with an eye to the greatest good of all the interests of the State. Has the gentleman investigated in relation to the influence which this wholesale taxing of the proceeds of the mines would have upon the mines themselves—upon the mines of the Territory generally? As I said the other day, we must judge of the value of any given act of government by the influence which it has upon the industry and morality, the wealth and the education of the community—by the amount of general well being which it produces. Now what will be the first tendency of this provision? Why, sir, the first tendency will be to retard the development of our mines. Every one knows that just as fast as our mines augment in value, they are gobbled up by capitalists who esteem three, four, five, and six per cent. as a valuable consideration. And if you tax the proceeds of the mines only, they will reason thus: "In a few years a railroad communication will be opened, wood and water will be abundant, and labor will be down. In a few years all the productions of California, necessary for the consumption of the laborer, and for working the mines, will be at a low figure. Therefore let us lock up the mines to-day, and to-morrow, and this year, and the next year, and when we find all these things readily available, we can reap the benefit and enjoy the advantages. Until then let us lock up our mines." That will be the view taken by the capitalists, and the State will be the sufferer all the time.

Then again, if you are to tax the mines on their production, I say the fairest way will be to tax them, not on the gross proceeds, but on the net proceeds. Here is a mine from which they are taking out bullion to the tune of say forty, fifty, sixty, or perhaps a hundred thousand dollars a week, and every dollar they take out, inspired by the hope of better times coming, costs them, perhaps, one dollar and ten cents. But, on the other hand, here is another mine, side by side with that, and every dollar taken out of the second mine costs the owners only

six bits. And yet both would be charged the same under this question of the gross proceeds. I ask if that is dealing justly by the miners? I ask if such invidious distinctions ought to be made? It seems to me not. The fairer way would be to tax the net proceeds. And I ask what will be the probable result during the first fiscal year of our new, forthcoming State? It is very doubtful if any considerable revenue would be derived from this source. If the State Government shall be launched, which we are to-day engaged in framing and perfecting, we should look well to the resources we have for maintaining and sustaining that government. If we find that surface property is unequal to the task of sustaining it, then we should look around and discover, if possible, where we can find other property. And if we have no confidence in the Legislature which is to follow us, we should devise such ways and means, and mature such plans, as will produce or secure the greatest possible amount of revenue with the least possible detriment to the interests of the State.

The fairest way that I can see is to meet this issue squarely and at the present time. It is to give the Legislature the full right to tax any and all kinds of property. I only desire the wording of this section to be such that no two good lawyers, who are in pursuit of the truth, can have two opinions upon the construction of that section, and I am willing to leave all the balance in the hands of the Legislature that is to be. I think I understand this much, that any Legislature, I do not care what the pressure from the mines or from the agricultural interests shall be upon it; I care not what pledges may have been forced from its members while they were candidates running for office, that they would not tax the ranches, or would not tax the mines, when that Legislature assembles here and assumes the responsibility of controlling the financial interests of the State; when the representatives shall meet together here with all the pressure for money upon them, with even their own per diem and mileage at stake, and all the other forces that will press upon them at once, I do not doubt that they will grasp hold of every kind of property that is within their reach, for the purpose of taxation. I say therefore, make the language clear and distinct, and leave all the future to the Legislature. Do not say to them that they shall not tax mines, or shall not tax ranches, or shall not tax the proceeds gross or the proceeds net—though I am not so sure but they will tax all of them, for they will have the same right to tax the mines and the proceeds of the mines, as they have to tax the ranches and the proceeds of the ranches—I do not know but the Legislature will do all these things, but I only say that we ought to leave the Legislature, when it shall be convened, power in its discretion to tax them all if necessary. I will conclude by expressing the hope that the amendment of my excellent friend, whose head is nearly always right, and whose heart never fails him, will be voted down.

Mr. NOURSE. I desire to quote very briefly from the Auditor's report here. I find from that that under the law of the Legislature taxing the gross proceeds of the mines, the whole amount of all the property assessed under that act was only four millions of dollars, while it is well known that the gross proceeds of the Ophir, and Gould & Curry mines alone, last year amounted certainly to over five millions. I refer to this only to show what the practical operation of such a provision would be.

The question was stated on the amendment offered by Mr. Chapin.

Mr. NOURSE called for a division of the question.

Mr. DuLONG. I understand that the sole difference between the first part of these amendments is, that the gentleman from Washoe, (Mr. Nourse,) says in his amendment "possessory rights," and the amendment of my colleague (Mr. Chapin,) says "all property, both real, personal and possessory."

Mr. DUNNE. What does the difference amount to? I make the point of order that it cannot be so divided; if it is divided there is nothing left of the amendment.

Mr. CHAPIN. It certainly cannot be in order to call for a division of that amendment. I offered that as an amendment to an amendment, and the gentleman has no right to claim a division of my amendment.

Mr. TOZER. Before the vote is taken on the amendment of my colleague, (Mr. Chapin,) I wish to say a word or two, although I had firmly resolved that I would not offer a single remark further on the question before the Convention. But I must say, Mr. President, that I consider this last proposition as the most objectionable of any and all that have been offered here, from first to last. Sir, the constituency which my colleague, together with myself, represents on this floor, will most unanimously put the seal of their disapprobation, by their vote, and in any way and every way in their power, upon such a proposition, when it shall be submitted to them. A provision for a tax upon the proceeds of the mines, without even the words "net proceeds" incorporated in it, is an outrage. I characterized it as such last year in a few remarks which I had the honor to submit to that Convention, and I characterize it as such now. It is an outrage which I should very much regret to see this Convention, after the mature deliberation it has given to the subject, commit upon the mining interests of this Territory.

The PRESIDENT. A point of order has been raised upon this amendment, and upon reading the two amendments, the Chair think they are substantially the same, with the exception of the proviso.

Mr. NOURSE. I asked for a division because I am willing to vote for the first part of the amendment of the gentleman from Storey—as

as it declares that all property, real, personal and possessory, shall be taxed.

The PRESIDENT. The Chair was proceeding to decide the point of order. If the gentleman desires to be heard upon that point before the decision is made, I will be happy to hear him.

Mr. EARL. I understood that the gentleman from Washoe (Mr. Nourse) wanted his proposition voted upon first.

The PRESIDENT. Objection was made to that.

Mr. EARL. I would like to have an expression of the Convention first upon that proposition, and I hope it will be so voted upon.

Mr. DuLONG. Now gentlemen have contended here that the words "real and personal" do not include mining claims. Then the gentleman from Lyon (Mr. Kennedy) proposed the word "mixed," and it was thought there was then no room for doubt, but that that would cover everything in the State in the way of property. But the Convention voted down that gentleman's amendment, and now my colleague (Mr. Chapin) steps in with his amendment, and says "all property, real, personal and possessory, shall be taxed." Now, in the name of heaven, can any gentleman tell me of any kind of property that is not included in that? But when he goes further than that, and specifies the proceeds of the mines, then I say he commits the same error that the former Convention did.

The PRESIDENT. The question is upon the point of order.

Mr. DuLONG. I am trying to show that there are two propositions here, and I want a separate vote upon each. I propose to show that the point of order is not well taken, first because the proposition of my colleague (Mr. Chapin) contains two distinct propositions, and then because it is the right of any member to call for a division. It is necessary to show that there are two propositions, in order to lay the basis for the right to a division.

The PRESIDENT. The Chair does not dispute that there are two propositions contained in the amendment, but the remaining question is whether the former part, upon which the vote is first to be taken, is not substantially the same as that contained in the proposition for which it is to be substituted.

Mr. DuLONG. The Chair may not dispute what other gentlemen may dispute. The gentleman from Humboldt (Mr. Dunne) made the point of order that it is not divisible because there are not two propositions.

The PRESIDENT. The Chair understood the gentleman from Humboldt to raise the point of order because a division left nothing to vote upon. Will the gentleman from Humboldt state his point of order again.

Mr. DUNNE. I will state that the point of order as I made it, is as the gentleman from Storey understands it, though if I had recognized the distinction I would have made it differently.

After some further discussion upon the point of order,

The PRESIDENT decided that the call for a division must be entertained, and that the first question was on Mr. Chapin's proposed amendment, down to and including the words "assessable purposes."

Mr. DuLONG. Now, sir, I wish to turn the tables upon these gentlemen who argued last night, and continued to argue, until the "wee sma' hours" of the night that they did not want to legislate invidiously against any class of men or any class of property—that all they wanted was to adopt that comprehensive term which will embrace the class of property which they say has escaped taxation in California. My colleague (Mr. Chapin) says in his amendment that all real, personal, and possessory property shall be taxed. Can anything more be asked than that? And if you go further, and say that the proceeds of mines shall be taxed, are not you making as invidious a distinction as if you were to say that "mines and mining property shall be taxed?" and then that "farms and farming property shall be taxed?" I am willing as a compromise between us and these gentlemen who have denied that all property is either real or personal, to put in another class of property called "possessory" property. I am willing to incorporate that word "possessory," so that no man in the Legislature, without plainly violating the obligation of his oath, can escape from the requirement that everything in the shape of property shall be taxed. I am willing to do that for the sake of harmonious action and to reconcile the conflict of sentiment. But further than that, if I am asked to put in mining proceeds, and leave out farming proceeds, or to take out one class of property and allow another to remain in, if I am asked to mention one species of property invidiously and not to mention another, I say no! never! never! Sir, I say it is unjust, and unfair, on the part of the representatives of other interests here, in my humble opinion, to ask us to do any such thing. I hope the first part of the amendment of my colleague will be adopted, and the balance of it rejected; and then we shall have the original section, only amended so as to provide that all property in this State, "real, personal, and possessory," shall be equally and ratably assessed and taxed. And if gentlemen ask anything further than that, they cannot get it from me, for one.

Mr. NOURSE. Upon second thought, it seems to me better that the proposition of the gentleman from Storey (Mr. Chapin) should be voted upon as an entirety, and for one, I should like to see the two propositions tested. I have made the motion for a division of the question, but as I should like to see the two systems fairly tested, I will withdraw the call for a division unless there is objection.

Several members objected.

Mr. DuLONG. Under all parliamentary rules, and in all parliamentary bodies of which

I have been a member before, the right exists in any member to claim a division.

The PRESIDENT. There is no point of order before the Convention. The Chair has already decided that the amendment is susceptible of a division.

Mr. DeLONG. But the difficulty is, we are working under Jefferson's Manual, and under that it is not the right of the member to call for a division, but the House alone can direct a division. If there is objection to a division we have to obtain the consent of the House for such a division. I will make that motion.

The PRESIDENT. The gentleman from Storey is correct, and the question will be on the division of the amendment.

Mr. EARL. I shall vote for a division of the question, and I will say that if the amendment is voted down, there will be a substitute offered not to tax the mines, except those of a certain value.

The question was taken on the motion that the amendment offered by Mr. Chapin be divided, and, on a division, that motion was not agreed to—ayes, 16; noes, 16.

The question was stated on the entire amendment proposed by Mr. Chapin.

The yeas and nays were demanded, and the vote resulted—yeas, 4; nays, 29—as follows:

Yeas—Messrs. Banks, Chapin, Crosman, and Dunne—4.

Nays—Messrs. Belden, Brady, Brosnan, Collins, Crawford, DeLong, Earl, Fitch, Folsom, Gibson, Haines, Hawley, Hover, Hudson, Kennedy, Kinkead, Lockwood, Mason, McClinton, Murdock, Nourse, Parker, Proctor, Scrugham, Tagliabue, Tozer, Warwick, Wetherill, and Mr. President—29.

So the amendment was not agreed to.

Mr. PARKER. In order to get a final vote before the hour for the recess, I move the previous question. I do not desire to shut off amendments, but I desire to get at a vote.

Mr. BANKS. I ask leave to say just one word.

The PRESIDENT. It is not in order, the previous question having been moved.

Mr. WARWICK. I rise to a point of order.

Mr. NOURSE. I think if we come to a vote upon this, there will be no attempt to present any other amendment, if this is lost.

Mr. PARKER. I withdraw the call for the previous question, with the consent of the Convention.

Mr. BANKS. I propose this amendment: I move to amend the amendment offered by the gentleman from Washoe, (Mr. Nourse,) by adding the following thereto:

"Provided, that no tax shall be imposed on any mining claim, or possessory right thereto, which, at the time of making the assessment, has a market value in money of less than ——— dollars per foot."

Mr. CHAPIN. I move to fill the blank with the words "twenty-five."

Mr. KENNEDY. I move to amend by making it five dollars.

Mr. TOZER. I move to amend by making it fifteen thousand dollars.

The PRESIDENT. It will be competent if the amendment shall be adopted, to fill the blank thereafter.

Mr. DeLONG. Now suppose I have five thousand dollars worth of mining ground of a dollar a foot—of course, under this proposition, it would not be taxed. But if another man has five thousand dollars invested in ground worth a thousand dollars a foot, has he got to be taxed, while I escape?

The PRESIDENT. The Chair does not suppose that the gentleman expects a categorical answer.

Mr. FITCH. That is where the "poor miner" comes in.

Mr. KENNEDY. I will state why I am willing to vote for "five dollars" in that blank. I am willing to exempt all claims worth under five dollars per foot in order to make a compromise here between the various views and opinions which gentlemen have expressed. I am willing to give a bounty, to that extent, to mining claims. That class of property being the principal property and the peculiar interest of this Territory, I am willing to say that all mining claims valued under five dollars per foot shall be exempted from taxation. The Convention refuses to insert words which I consider necessary, to include all property, but I am willing to go further, and to make this compromise, that every man who owns a claim which he cannot get five dollars a foot for in the market, shall be exempt from taxation upon that claim. I do not care whether he has one hundred or one hundred thousand feet, if the claim itself it not worth over five dollars a foot, I am willing, in order that this question may be settled in some way, to exempt it from taxation. But the gentleman from Storey (Mr. DeLong) has claimed that these claims are not property, and now he says, in effect, that they are.

Mr. DeLONG. I say, only, that if they are property when they are worth five dollars a foot, then they are equally property when they are worth five cents a foot. I have not said they were worth anything, or were property; I say, only, that if they are property, no matter how much they are worth, they should not be exempt. Whether they are worth five thousand, one thousand, or one hundred dollars, or worth only a dollar a foot, makes no difference; if they are property at all, they should be taxed.

Mr. KENNEDY. The gentleman maintains, as I understand his argument, that a mining claim is not property and cannot be taxed as property. Then I ask why is he so anxious not to have this provision in the Constitution?

Mr. DeLONG. Because it operates unequally on the two classes of mining claims. That is the reason.

Mr. KENNEDY. If it is not property, it cannot be taxed at all. If this provision is placed in the Constitution, we nevertheless

assess for a mining claim, unless it is property.

Mr. DeLONG. That is so.

Mr. KENNEDY. Now the only reason the gentleman can have for opposing this provision, as I understand it, is this: that by placing this provision in the Constitution, men who have mines worth over five dollars a foot will be driven to the expense of a lawsuit in order to test the question whether or not their taxation is Constitutional.

Mr. DeLONG. No; but if it is held to be constitutional it will operate unfairly upon the two classes.

Mr. KENNEDY. Well, admit that it will, and I do not deny it. I have contended that all men owning property, whether mining claims or ranches, whether their claims are worth a thousand dollars or a dollar a foot, should be taxed. But I do see this difficulty: that there is a conflict of ideas and opinions here—that there is a conflict between those who represent exclusively the mining interests, and those who represent exclusively the agricultural interests. Now I stand here as a representative of both interests, for we claim to have both in our county, and I am willing, for the sake of a compromise, to place in the Constitution this provision, exempting all mines which are worth under five dollars a foot, not upon the principle of exempting any particular class of property from taxation, but on the same principle upon which bounties are offered and given. It is made a bounty to the miner, and when a party has a mining claim which in the market will bring him over five dollars per foot, he is no longer your "poor miner," but he is a man who can well afford to pay taxes. But up to that point, mining being the principal interest of this Territory, we say we are willing to pay him a bounty to the extent of exempting him from taxation.

I have talked with gentlemen from outside counties here—and when I speak of outside counties I mean those which are distant from the capital, of course, and do not refer to them in regard to their intrinsic value—and those gentlemen have told me of claims, the rock from which, as far as it is already developed, they are willing to guarantee would pay as richly as that of better known claims which are worth a hundred dollars a foot, and yet at the present time those claims have no market value above five dollars a foot. This being the condition of those mines, having no actual market value, I do not think they would be taxed in any case, but in order to take away any suspicion that those "poor miners" might have, that we intend to burden them with taxation, I say I am willing, for one, to fix in the Constitution a definite value, under which no taxation of mining claims shall be allowed. I think we have a perfect right to do it. We have a right in the Constitution to say what shall be taxed and to exclude any property we please from taxation; and in order to encourage mining I am willing to say in the Constitution that no mines under a certain value shall be taxed.

Mr. DeLONG. I think the gentleman from Lyon will be able to satisfy any class of his constituents that he has fairly represented their interests, for he voted against this proposition once, on the ground that it was an invidious distinction, and now he votes for it, as a bounty to poor miners.

Mr. KENNEDY. But I explained that the miners in our county had said that this clause in the old Constitution was taxing a hole in the ground, and although I believed that that was not the case, but that a hole in the ground was not a mine, yet I was in favor of using such language as would remove any doubt or suspicion which might exist in the minds of the miners.

Mr. DeLONG. Yes, sir; and then the gentleman said he wanted to employ the word "mixed," because the words "real and personal" he thought did not cover all kinds of property, in which he disagreed however with Bouviere and Blackstone. I read from the books here the definitions of property, and the authority is not contradicted. The gentleman said he meant to include every class of property possible to be included, and that must of course include all property in mining claims, whether worth five dollars a foot or any other amount. In that I suppose he represented the agricultural interest of his county, and now he represents the mining interest by advocating an amendment to exempt five dollar mines. Therefore I say he can claim to have represented all sides. Now whenever you depart from principle you depart from the only safe landmark, and this principle which the gentleman now abandons I think would have been a good one to stand by. The principle is undoubtedly correct that every man should pay on all the property he possesses, according to a true and equal ratio, his share of the expenses for the support of the government under which he lives; and any law, much more any fundamental law, must be wrong which does not recognize that principle as a general rule. If anything is to be exempted from taxation let it be exempted by the Legislature, or if the Legislature deems it best, let all be put in, and if anything is exempted from taxation at all, let it be for the reason that it cannot be taxed. But let us declare in the Constitution that all property must be taxed according to its value. If the gentleman says a hole in the ground is not property, but a mine is property, then I insist that the hole in the ground, will not be taxed, without it is a mine, and there is no necessity for any provision about it in the Constitution.

But the gentleman from Lyon does not understand my allusions to the fact that mines are not property, in the sense in which we are here speaking of property. I insist that a mine is property, but I say it is property belonging

to the United States Government, and not property belonging to an individual here, which, under our Enabling Act, we can reach for the purpose of taxation. That is my idea. I have concurred with the gentleman's views in some respects, and I am willing to aid by my vote to carry out his idea of taxing all property, when we can reach it as property; but it does not seem to me that we can reach the property in the mines which belongs not to the individual, but to the government of the United States.

Mr. EARL. My colleague (Mr. DeLong) seems clearly to take the ground that the mines are not property, from the fact that the title is in the General Government. Now, I admit that the title is in the General Government; but the title to my ranch also is in the General Government, yet cannot the State tax my improvements and possessions, and all my right in that ranch, to their full value? Now, I propose to vote for the proposition of the gentleman from Washoe (Mr. Nourse,) and for the five-dollar clause offered by the gentleman from Humboldt (Mr. Banks,) also.

Mr. FITCH. I move the previous question.

Several Members. Oh no, no!

Mr. BANKS. I rise to a point of order, and by way of inquiry, I desire to know whether the previous question will extend to the passage of the original proposition—to the adoption of the original section as printed here.

The PRESIDENT. It covers the whole matter before the Convention.

Mr. KENNEDY. If the previous question is carried, cannot we vote on the amendment of the gentleman from Humboldt?

The PRESIDENT. Undoubtedly; that is the first question pending. The amendments having been disposed of, the previous question then recurs back to the original matter.

Mr. EARL. I rise to a point of order.

Several gentlemen addressed the Chair, amidst some confusion.

The PRESIDENT. The Chair will have to raise another point of order in about ten minutes. [Laughter.]

Mr. EARL. I have the floor; I had not yielded it when my colleague demanded the previous question.

The PRESIDENT. In the opinion of the Chair the gentleman certainly had taken his seat, and under parliamentary usage he must be considered as having resigned the floor.

Mr. FITCH. I have no desire to impede the offering of amendments, and if it is the understanding that there is to be no debate I will withdraw the demand for the previous question; otherwise I will not.

Several Members. Very well; let that be understood.

Mr. FITCH. I withdraw the previous question.

The question was stated on the amendment offered by Mr. Banks, and the yeas and nays were demanded.

Mr. KENNEDY. Should not the blank be filled before adopting the amendment?

The PRESIDENT. It can be filled at any time.

Mr. TOZER. I desire to say one word only. I believe it is a fundamental principle of constitutional law—it is in the Constitution of the United States, in the Constitution of California, and in every other State Constitution that I have examined—that all taxation shall be equal. Now, sir, you propose by adopting this amendment of the gentleman from Humboldt (Mr. Banks) to levy a tax upon mines of a certain value, and to exclude from taxation mines of a certain other value. Suppose you fill the blanks in this amendment with five dollars? One man in my neighborhood has a claim worth a little less than five dollars a foot, and another, in his immediate vicinity, has another worth five dollars and a half, or eight, or ten dollars a foot. They both have the same kind of claim, but one is subject to taxation by constitutional enactment, and the other is exempt. I protest against that as a violation of fundamental principles.

The question was taken by yeas and nays upon the amendment offered by Mr. Banks, and the vote was—yeas, 9; nays, 24—as follows:

Yeas—Messrs. Banks, Chapin, Collins, Crawford, Crosman, Dunne, Earl, Fitch, and Kennedy—9.

Nays—Messrs. Belden, Brady, Brosnan, DeLong, Folsom, Gibson, Haines, Hawley, Hovey, Hudson, Kinkead, Lockwood, Mason, McClinton, Murdock, Nourse, Parker, Proctor, Shortsvant, Stedman, Tozer, Warwick, Wetherill, and Mr. President—24.

So the amendment was not agreed to.

During the voting—

Mr. HAINES, (when his name was called,) inquired if the amendment included the proposition to exempt mines worth five dollars per foot.

The PRESIDENT replied that the blank was to be filled thereafter.

Mr. HAINES. I vote no.

Mr. COLLINS. I understood it so, and if not, I shall change my vote.

Mr. HAWLEY. Unless the language of the section is to be changed, and that portion of it stricken out which provides for a uniform and equal rate of assessment and taxation, I shall have to vote no.

The PRESIDENT. I will take occasion to explain my vote, although I do not suppose it is necessary after what I have already said. I have maintained the one distinct proposition that all property, whether merely possessory or otherwise, should pay its just proportion of taxation, and upon that principle every mining claim, whether worth one dollar or one hundred dollars a foot, should be taxed according to its value. That is the position I have universally advocated, and I cannot sacrifice a matter of principle to a mere question of expediency.

The result of the vote having been announced as above stated,

The question was stated on the amendment offered by Mr. Nourse.

Mr. HAINES. I move the previous question.

SEVERAL MEMBERS. Oh no, no!

The PRESIDENT stated the question: Shall the main question be now put?

Mr. BANKS. I have a privilege in this case which I wish to exercise. I wish my protest against the previous question to be entered upon the journal. ["Question, question!"] It is an outrage to pass a Constitution under the gag law.

The PRESIDENT. The Secretary will enter the gentleman's protest.

Mr. KENNEDY. My colleague (Mr. Crosman) has an amendment which I would like to hear read.—[cries of question]—for information only, that is all.

Mr. HAINES. I have called for the previous question, and I want the question put. I want my rights here, and I ask if it is debatable for an hour.

The PRESIDENT. No debate is in order, but if there is no objection made the amendment must be read.

Mr. DELONG. I rise to a point of order, and it is that the gentleman cannot ask for the reading of that amendment under the previous question.

Mr. CROSMAN. I had risen to read it when the previous question was moved, and I supposed I had the floor.

The PRESIDENT. The Chair will repeat that if there is no objection the amendment of the gentleman from Lyon will be read for information.

SEVERAL MEMBERS. I object.

The PRESIDENT. Then the question is, shall the main question be now put?

Mr. KENNEDY. What is the main question? Is it the amendment of the gentleman from Washoe?

The PRESIDENT. That is the first question.

Mr. CROSMAN. I would ask, is it the understanding of the mover of the previous question that it will cut off all debate?

Mr. DELONG. Certainly; it cuts it all off.

Mr. CROSMAN. The effect would certainly be to prevent all argument upon the main question, as well as all further amendments.

Mr. NOURSE. If that is the case, I hope the call for the previous question will be withdrawn.

The PRESIDENT. The Chair has already stated that the previous question cuts off all debate.

Mr. DELONG. I trust the Chair will take cognizance of the time.

Mr. HAINES. With the permission of the Convention, I will withdraw the demand for the previous question.

The PRESIDENT. If there is no objection it will be withdrawn.

Mr. FITCH. I object. I want to see it put.

The PRESIDENT. The hour of five o'clock having arrived, the Convention, under the rule, is at recess until seven o'clock this evening.

EVENING SESSION.

The Convention met at seven o'clock, and was called to order by the President.

TAXATION.

The PRESIDENT. When the Convention took a recess this afternoon the business under consideration was the call for the previous question by the gentleman from Douglas, (Mr. Haines.) That gentleman had proposed to withdraw it, but the gentleman who had seconded the motion (Mr. Fitch) positively declined to consent to the withdrawal. The question before the Convention now is—Shall the main question be now put?

The question was taken and the motion was not agreed to.

Mr. CROSMAN. I desire to inquire whether further amendments are now in order.

The PRESIDENT. An amendment to the amendment pending is in order.

Mr. CROSMAN. I will offer the following as a substitute for the amendment of the gentleman from Washoe (Mr. Nourse.)

SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory; provided that in order to secure the development of mines no assessment shall be made of mining claims of a less marketable value (at the time of making the assessment) than five dollars per foot; excepting, further, such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes.

The PRESIDENT. The Chair will hold that this amendment is not in order, because it is in substance and effect the same matter which has already been voted upon. It is substantially the same as the amendment of the gentleman from Humboldt, (Mr. Banks,)—neither more nor less.

Mr. CHAPIN. The blank is filled, which makes a difference.

The PRESIDENT. The blank is filled, it is true, but I regard that as making no substantial difference, because the blank could have been filled at any time in the amendment of the gentleman from Humboldt.

Mr. BANKS. I regret exceedingly to hear this decision of the Chair, which operates not only against the gentleman who offers the amendment, but several others who agree with him, and therefore I am compelled to appeal from the decision. I will state my grounds of appeal. The first proposition contained a blank, which left it doubtful as to the amount or price of the claim to be exempted, which may have led some members to vote against it, but this is distinct and specific as to the amount. That is a difference, and, being different, I think, according to all parliamentary law, it should be entertained.

After considerable discussion upon the question of order involved the question was taken—Shall the decision of the Chair stand as the

judgment of the Convention?—and upon a division the vote was—ayes, 23; noes, 5.

So the decision of the Chair was sustained.

Mr. MURDOCK. I have sent up an amendment, and I wish to inquire whether it is in order.

The PRESIDENT. It will be in order unless the same matter has already been voted down.

The SECRETARY read the amendment, as follows:

SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, exceptingg such property only as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes."

The PRESIDENT. The Chair understands that, by this amendment, the section would be left to stand as it now reads, except that the words "real and personal" would be stricken out.

Mr. MURDOCK. I will explain my views on this subject. I have been sitting here and listening to the debates as they have progressed, and have watched them very closely, in all their diverse windings and forms; and it strikes me we have altogether mistaken our calling. As I intimated last night, we have not come here to legislate. Now, sir, in that amendment, I propose to strike out from the original, the words "real and personal," following the word "property." I suppose when we have said "all property," we cannot make it any stronger by defining the different kinds of property. I called the attention of the Convention last night to that point, stating that I considered the words "mines and mining property," surplusage, and I stand just there now. I am willing that "all property" should be taxed, and I do not want any other definition. I understand "all property" to mean all property. You may say "personal and real property," or "mines and mining property," or "ranches and ranching property," or "personal chattels," and all that—the shoemaker with his kit, and the tailor with his shears, and his bodkin, and his patterns, and so on to the end of the chapter—but do you make it any stronger than you would to say "all property," and there stop? Now when you come to that one thing, and say that "all property shall be taxed equally," what more do you want to do? Why do you want to say "all personal property," or "all mixed property," or "chattels real," and "chattels personal," or anything else? I am satisfied to say "all property," and I do hope that this Convention will be satisfied and arrive at the same conclusion. Let us say that our schoolboy education has been sufficient for our purpose, and when we have said "all property," let us understand that we mean the whole thing. That is my view of the subject, Mr. President.

It does seem to me, I say, that we have mistaken our calling. We have come here and debated, and tried to legislate, and have disagreed on what was right and what was wrong, when it strikes me we had nothing to do with it. If I may be allowed to repeat what I said last night, I supposed when I was elected, it was to come here to assist or to lend my aid to framing a fundamental law by which legislation should be bounded. As I expressed myself last night, I supposed this fundamental law should be to the new State what the chart is to the seaman—that it should point out the shoals, this way and that way, and not so narrow down the course that the winds might strand the ship of State on either side. I want the State to ride through triumphantly. What is wise legislation this year may be bad legislation next, and so on from year to year. Now suppose we define this word "property," and confine the Legislature to certain bounds—narrowing them down, so as to say when they get up to debate a question, as to expediency, as to what is really right and for the best interests of their constituents—"Oh; but stop! There is a constitutional bar there, and you cannot go on." I think we have taken too wide a range in respect to our duties. At all events it is too wide to suit me. I am no lawyer, and no orator, but my constituents knew what I was when they sent me here. They did not expect me to say a word, but they expected me to sit here and think, and to say "yea" and "nay" at the right times. But I have felt compelled, under the existing state of affairs, to come out and give my views, such as they are. Now I am willing, and it is right, that everything should pay its proportion for the support of the Government, and certainly I want all property taxed.

Mr. NOURSE. Has the gentleman any objection to an explanation? Perhaps he is not aware of the condition of this matter. The amendment I have offered, to which the gentleman raises an objection, is in these words:

"The Legislature shall provide by law for a uniform and equal rate of assessment and taxation of all property, possessions, and possessory rights," etc.

Those last words are put in because the gentleman from Storey (Mr. DeLong) maintains that mining claims or possessory claims are not property. To avoid that objection we desire to say "all property, possessions, and possessory rights."

Mr. MURDOCK. I have an objection, and it is this: Now I am an illiterate man, whose business has been to work, and to delve in the mines and the sage-brush, and I have not had the ability, nor the chance, if I had the ability, to acquire much learning. But I stand here as a man, to represent my constituents, and as a jealous man, too. I am afraid of these lawyers. They say such and such words mean so and so, and they go beyond me. They talk about "possessory titles," and "chattels real," and all those things, and it is beyond my comprehension. I think the more of these terms we

have, the greater chance there is for lawyers to pick and quibble. When they go on and say "property real and personal," and "chattels real" and "chattels personal," and "personalty," and "realty," and "mixed property," and all that, and every other kind of property, they fuss me up. [Laughter.] I do not understand it. I want to use no other word than "property"—a word I learned when I was a boy. When we say "all property," I suppose we mean all property. I should suppose that meant the whole. Now if property is divided up into personal real, chattels real, chattels personal, and all that sort of thing, it is too much for my brain; I can't understand it. Say "property," and what more do you want? That is what I call sense, so far as I can understand it; and if I am to blame for that, I can't help it. [Laughter.] As I said before, I think we have mistaken our calling, and are looking through legislative eyes.

Mr. BELDEN. Is the gentleman from Churchill aware that the Enabling Act forbids our taxing the property of the United States?

Mr. MURDOCK. Thank you for the suggestion. I am well aware that the Enabling Act says property belonging to the United States shall not be taxed; but I am perfectly well aware also, that all possessory claims do not belong to the United States. The fee simple belongs to the United States, but I have confidence in gentlemen whose opinions have been given on this floor, as to the meaning of this Enabling Act, where it says that no property belonging to the United States shall be taxed, and I will explain it, not perhaps in lawyer language, but so as to make myself understood. If I do not speak like a lawyer, I will not speak disloyally. I think that the property which is there spoken of means a certain kind of property belonging to the United States, as for instance, Fort Churchill, or any other piece of property owned or occupied exclusively by the United States. But if property is set off for a mine, that is another thing. The property belonging to the United States should not be taxed, but I do not think that refers to possessory rights, in any way, shape or manner.

Now to be more clearly understood I will ask gentlemen to refer back, not to the Enabling Act, but to the Organic Act, for we have an Organic Act as well as an Enabling Act, and I suppose that there is not a gentleman in the Convention but is just as familiar with the Organic Act as he is with the Enabling Act. Now what does the Enabling Act mean when it goes on and defines the lines between here and California, and to the north, and the south, and the east—when it defines by certain lines the bounds which surround the Territory and calls all within those lines the Territory of Nevada? And what then does it say? It says that no portion of the ground included in those boundaries, where the Indian title is not extinct, shall be considered as forming any portion of that Territory. Now, in the name of heaven, where is our Territory? Show me the first foot of ground where the Indian title is extinct here. I have been down here and defended myself against the Indians, and been refused protection, too, by high authority which I will not name here to-night. I have been told by high authority—by men who have high authority now—that if I wanted to go on the frontier I must take the chances. That Enabling Act, which says that no part of the Territory within the boundaries described shall be construed so as to belong to the Territory, where the Indian title is not extinct, excludes what? It excludes this very city and the ground this building occupies, and even the seat you sit on, Mr. President. I say there is not a foot that you can show me which this Territory has a right to—not a single foot of ground.

I have said that to others before now, and I have said we have not yet found a head, or master of the Indians, with whom we can lawfully negotiate. I can take you to the man that claims this very ground here, and he can tell me, and talk in his own language, too, that he owns this ground. He tells you that the Indians, after a great fight, had a treaty—the remnant of them coming from the other side. They are now called "Washoe," but they came in the first place from the other side of the mountains. He tells you the treaty was this: He says, "We had heap big talk, and heap agree all time—Washoe go so far—Washoe go down Truckee—Washoe go so far down Truckee; Washoe no ride horse—heap catch him Washoe horse all time." That is the sum and substance of it, in English. [Laughter.] There has been an Indian title, and is to-day, and I can find the man that claims it. And this is the condition, that the Washoes shall hold this land, and be allowed to hunt and fish, but shall not be permitted to ride on horseback. That was the mark of subjugation, and it is not long since that a Washoe Indian bought a horse here in Carson, and paid forty dollars in gold for it, but he had not gone a hundred rods away before a Pah Ute Indian took it away from him, and rode off. That shows where the title is. [Laughter.]

Now what do you think of this Enabling Act? That Act says we shall not tax the property which belongs to the United States Government. Is there a man who believes that the possessory right to a mine cannot be taxed, for the reason of that provision of the Enabling Act? If it could not be, then a possessory right to a ranching claim is in the same condition. I do not care whether it is a mining claim or a farm, the rule would be the same.

I have listened and been instructed and amused with the debates here, yet sometimes I regretted the wide range they have taken, when I have thought to myself—"Is it possible that we have all mistaken our calling?" But I knew I was not a lawyer, and hadn't any business to get up and expose my ignorance before

the assembled wisdom of this whole Territory; but I have stood it as long as I can, [laughter,] and hence I have proposed my amendment, and I wish it to have as fair a consideration as you can give it, and no more. If the Convention can say anything more than "all property," I do not see it. That is all there is, and what is the use of describing it? I had just as lief say "all chickens and all coops," as "all mines and mining property." Why do we want to put "chattels real" and "chattels personal" into it, or anything of that kind? Why do you talk about "mixed chattels" to a gray-headed man like me, and about "property mixed," and all those things? [Laughter.]

I most respectfully submit these views to the consideration of this body, and if I have said any thing unparliamentary I expect to be excused, for really my intentions are good. I intend to do what is right, and I want all property taxed without exception, but I do not want this Constitution filled up with such words that lawyers can pick at it, and say "chattels real" and "chattels personal," and "chattels mixed," and so fuss up men like me. [Laughter.] I don't want to be fussed up. [Great laughter.] I want to stand on broad ground. Lawyers are very good fellows; I have nothing particular against lawyers; but I say I am afraid of these lawyers.

Mr. DeLONG. Lawyers are mixed chattels, are they not?

Mr. MURDOCK. I was just going to say that lawyers are what they are from the circumstances that have surrounded them from youth up. I do not blame them; I might have been a lawyer myself had I studied books for it when I was a boy. [Merriment.] But if I had been, I think I should have been more scrupulous than some I know of in that profession. [Renewed laughter.]

With these remarks, all I have further to say is that the amendment I have offered looks to me to be the most simple, and the easiest way to get out of it. Now this idea of compromise, and coming together, does so disturb my brain that I cannot understand it. The idea of excepting a mine worth five dollars and taxing one worth a hundred dollars looks to me ridiculous, and wrong in principle, because I might hold five thousand feet in mining claims worth less than five dollars a foot, and which I could take that very amount of money for to-day, while my neighbor happens to own a hundred feet worth five or ten dollars a foot, and he is taxed but I am not. It looks to me not right, but altogether wrong. It says here "all property shall be taxed equally." That is what I want. "All property shall be taxed equally." Is there any humbug about that? Men say, do not quibble and dodge about this, and for one I want to say "all property," and so put it on fair ground. Is there a school-boy that does not know what "all" means? and what "property" means? and that if it says "all property" it means the whole? Why do you want to cumber this Constitution, or this Article of it, with anything more? It seems to me perfectly clear that you have said all you could say, when you have said "all property," and if you say ever so much more I cannot see that it would comprehend anything but "all property," after all.

Mr. WARWICK. Notwithstanding the laughter I have heard from some gentlemen, I must confess that I have listened with instruction to the speech, as well as to the amendment proposed by the gentleman from Churchill, (Mr. Murdock.) Owing to the peculiar wording of the amendments before the Convention, we have been compelled to bring in law-books here, and to listen to learned discussions as to property real and personal, and the nice distinctions of chattels real, and qualified property, etc. We have had to dive deep into the legal lore of the most learned lawyers in the Convention. Now, sir, we have arrived at a point where, if gentlemen on the opposite side of the question really wish for compromise, I think we are ready to meet them, not by finely drawn distinctions of real and personal property, or any other description of property, but by plain, straightforward language. We are willing to cover it all with the broad proposition of "all property," and then leave the definition of the word "property" to the five gentlemen whom we propose to place on the bench of the Supreme Court of Nevada. Is not that enough? Are there not men around me who are looking forward to that high judicial position? And, provided they are worthy of it, I am willing to lend my aid to elevate them to that place, and then leave to their wisdom the definition of the word "property." Day after day we have been compelled to listen to legal definitions of what property consists of, and now if gentlemen really desire to settle this question definitely and for all time, I for one am willing to settle it on this basis, that "all property shall be taxed," and I insist that when we have said that we have said enough. I do not ask the Convention to say that mines shall be taxed, or that farms shall be taxed; I do not ask you to say that chattels real or chattels personal shall be taxed, or that it shall be the horse, or the cow, or the ox; but I am willing to cover every thing with the term "property," and then leave the Supreme bench to define what we mean by "property," as we are willing to leave every other question to be decided by that tribunal, in whose hands are the destinies of the people of this State. As a Court of last resort we select five men whom we call Supreme Judges. And why? Because after every other resort for justice has been exhausted we turn to them and say, "We have sought justice here, and we have sought justice there, and now we come to you as the last resort, because we know that to you is the final appeal, and we ask you to tell us what is justice, and what is not." Even when rebellion raised its hydra head men told us they were willing to leave the questions involved to the

Supreme Court of the United States. We do not ask you to define here what "property" means; but we are willing to cover it all with that broad term "property," and there leave it, and whatever "property" covers the Supreme Court will decide to be covered.

I do not know whether, under the latitude which has been allowed to debate, it would be altogether proper to allude to the amendments which have been offered, but still I trust I may be permitted to refer to those amendments. The Convention very properly refused, a few minutes ago, to adopt an amendment exempting from taxation low-priced mines. I say tax them, as you do other mines, at whatever rate you please, if you say you will tax the mines, but let the taxation be equal. If you say you will exempt five-dollar mines from taxation, and not others, then you engraft in your Constitution a provision which I believe would not be able to stand a moment, under the test of the Constitution of the United States. Let there be no discrimination. We have no right to say to the individual who owns a mining claim worth five dollars a foot that he shall pay a tax, and to him who owns claims which are worth only one dollar a foot that he shall not be taxed. Consequently I think that we have now arrived at a point in this debate where this matter can be definitely settled, if it is capable of settlement, and the only way is by covering property of every description with the broad term "property." Is not that enough? Are gentlemen afraid that the Supreme Court will be so profligate, or so corrupt, that they will not define that word property? Are lexicons so behind the age that they do not define the word "property" so clearly that men of ordinary comprehension can tell us what it is? The gentleman from Churchill (Mr. Murdock) is right in opposing those distinctions, which are so fine drawn and intricate, and he has shown himself possessed of that intelligence which readily enables him, in his own plain-spoken way, to tell you of what property consists.

Mr. BANKS. I wish to ask the gentleman from Lander a question. Does he believe that the word "property" includes mines and possessory rights to mines? And if so, does he believe that they will be taxed under this provision?

Mr. WARWICK. Now, sir, being somewhat like what my friend the gentleman from Churchill, in his modesty declared himself to be—although I could not discover it certainly from his remarks—being somewhat illiterate, and not aspiring to a seat upon the Supreme bench, I should prefer to leave it to the most exalted minds of the men whom the people are willing to place on that Supreme bench, to define what is property and what is not. I am the owner of certain property which it has been proposed here to tax, and if the Supreme Court in its wisdom shall say that those mines, not barren altogether, but barren to me, those mines which have exhausted my means—if the Supreme Court shall say to me that every thing I possess is property, then bowing in humility to their wisdom, and to the majesty of the law, will I do my utmost and my best endeavors to pay whatever taxes they and the Legislature shall see fit to impose. But I am not here to define property; I am willing to leave that to the Court of last resort. If the Legislature may not define it, after every other means is exhausted then I am willing to go to the Supreme Court and say, "If it is property tell us so, and then, as good citizens, we bow in submission;" and if it is not property, then we still remain untaxed.

What is the proposition which gentlemen seek to incorporate? They tell you there is a species of property in which the fee simple belongs to the United States, and which is by special exemption left out of the Constitution. Now I ask, if there is any such species of property, can we by any act of ours subject it to taxation? Can we incorporate any provision in our Constitution which shall be in contravention of an act of the legislative department of the United States Government? No gentleman pretends that. But for fear there should be some mode of escape, for fear the Supreme Court should not do its duty, these gentlemen seek to incorporate, by fine-drawn theories, and analytical words, if you please, something into the Constitution which shall include everything, whether right or wrong. Sir, if the most important questions may come before the Supreme Court, questions affecting not property alone, but even life and death—and these gentlemen have already consented to place those questions in the hands of the Supreme Court; from time to time we have already said yea or nay upon that—if in cases of life and death, cases involving the most sacred rights known to the laws, you are willing to leave the question of right or wrong to the Supreme Court, are you not willing to abide the decision of that tribunal, whatever it may be, in cases where only property is concerned?

I tell you that of all the practical compromises ever known, nothing has been more practical than this which has been proposed by the gentleman from Churchill. That sound practical sense that led him last night to advance certain propositions here in such a way that there was no getting around them, homely though the phrase might be in which they were couched, has led him to present this amendment, and here is the time and now the opportunity for a compromise which will settle this vexed question. Now is the time, and with the broad word "property," which will in every way cover the question, to settle it once for all. Let us decide it now, before we adjourn.

The PRESIDENT. The Chair will state in relation to the amendment as it is presented, that the amendment to the amendment last offered proposes to strike out a portion of the amendment offered by the gentleman from

Washoe, (Mr. Nourse.) Under the ruling which the present occupant of the Chair has made, I will decide that the first vote will be on the amendment offered by the gentleman from Washoe.

Mr. DeLONG. Then I wish to offer an amendment to the amendment of the gentleman from Washoe.

The PRESIDENT. There is an amendment to an amendment already.

Mr. DeLONG. Then must not the amendment to the amendment be put first?

The PRESIDENT. The Chair thinks the gentleman from Storey understands it very well. The Chair rules that the question first comes upon the amendment of the gentleman from Washoe.

Mr. DeLONG. Inasmuch as the gentlemen from Churchill proposes to strike out, and thus render imperfect rather than perfect the section, why is not his amendment in order?

The PRESIDENT. That is the ruling of the Chair, and the gentleman can appeal if he desires, and proceed in order.

Mr. DeLONG. I do not wish to appeal, but I am in favor of the amendment of the gentleman from Washoe, with a slight alteration, and inasmuch as that amendment is the only one which proposes to perfect the section, I desire to ask if the amendment of the gentleman from Churchill is not rather an amendment to the original section than to the amendment of the gentleman from Washoe.

The PRESIDENT. The section as reported back from the Committee of the Whole was itself an amendment to the text which had been referred to that Committee, and that report was open to amendment. The gentleman from Washoe then offers an amendment, which is really a substitute, but is treated as an amendment under our rules. Then the gentleman from Churchill offers an amendment which proposes to strike out a part of that which had been proposed to supplant the original proposition. The Chair holds that the only legitimate order is to take the vote first on the amendment of the gentleman from Washoe.

Mr. DeLONG. Very well; I ask that the amendment be read.

The SECRETARY read the amendment proposed by Mr. Nourse.

The yeas and nays were demanded upon the adoption of the amendment, and the Secretary proceeded to call the roll.

Mr. BROSNAN. I wish to say one word before voting on this question. I shall vote in the affirmative, although I would have preferred that the words "possessions and possessory rights" were not in the section. I will vote for it, however, because I want this question brought to a conclusion. I look upon those terms as synonymous in every sense, and I am sorry that gentlemen who favor this motion should insist upon keeping them there. I vote "aye."

Mr. DUNNE. I wish to explain my vote. The Convention will bear me witness that I stated, in the discussion upon this subject, that, as a matter of general policy and principle, I believed it wrong to tax the mines. As a matter of compromise, however, I have voted previously in favor of taxing the mines, within a certain limitation proposed; but I did that only for the sake of a compromise. Now those who entertain opposing opinions have failed to meet that concession, and I therefore fall back on my original position, of the general impolicy of taxing the mines, and I vote henceforth and forever "no."

Mr. EARL. I was in hopes that we should have amended this proposition, so as to be satisfactory to all, by using the words "real, personal and possessory." I shall vote "no."

Mr. PITCH. As is well known, I am in favor of taxing the mines. At the same time I am willing, and even desirous, that all allusion to the mines by name should be stricken out of the section. That has been done, although I regret to say not with the concurrence of the delegates representing the agricultural interest. Still I am willing to meet them in a spirit of compromise, for the sake of securing the adoption of the Constitution, and regarding this amendment as a compromise between the amendment offered by the President and that proposed by my colleague (Mr. Toser,) I vote "aye."

Mr. HAINES. I would like to explain my vote, and in order that I may be fully understood, if there is no objection, I wish to ask a few questions, because I want to vote intelligently, and I want to be able to go home to my constituents prepared to tell them what is the understanding here, so that there will be no misunderstanding between myself and my constituents. If it can be shown that the mines are to be taxed in proportion to their actual cash value, to sustain, or help to sustain our new State Government, I shall vote "aye," and I wish to ask the President if that is the construction he puts upon this amendment?

The PRESIDENT. The gentleman must judge for himself.

Mr. HAINES. There is no use in employing vague language, and I do not intend to use such language as some gentlemen have intimated that they will use before the people—that is, to tell them, in the mining districts, that this section does not mean the mines, and in the agricultural districts that it does. I want no misunderstanding about it, and if that is the case as it stands I wish to vote so as to have it clearly understood. Therefore, for the present, I withhold my vote.

Mr. KENNEDY. I would like to explain my vote. I intend to vote "aye," for the reasons expressed by the gentleman from Humboldt (Mr. Dunne,) but drawing a somewhat different conclusion from what he does. I have offered what I considered as a compromise, but gentlemen, some of whom represent mining constituencies entirely, declined to accept it, and there-

how I now vote for the adoption of words which I think must without doubt include mines as subjects of taxation. I vote "aye."

Mr. BALL. If I understand it correctly, explanations are now in order, and as several gentlemen have explained their votes I shall do the same. I have voted "aye" on the amendment, and I wish to explain my vote in this way: In the Convention of last year I was Chairman of the Finance Committee, and we had this subject under investigation. I then very carefully and studiously investigated it, and from all I could learn I could not find that the State organization could possibly be run, or a State Government carried on, without the taxation of the mines. The property of the State consisted then, as it does now, about three-fourths of mining property, and one-fourth of property of other kinds. Therefore, I say, I do not wish to see a State Government constituted, or a Constitution framed and submitted to the people, which does not include mines as subjects of taxation. As I understand it, this clause—"possessory claims and possessions"—covers the mines as fully as the clause did which we adopted last year. I wish to have the matter fully understood, and to leave no way to dodge it. I say that the State Government cannot be carried on without taxing the mines in my judgment, and therefore I have voted "aye."

Mr. HAINES. Being satisfied that there is no doubt about the amendment's including mines and mining property, I will vote in the affirmative.

Mr. COLLINS. I have voted against the adoption of this amendment, proposed by the gentleman from Washoe, not, as this Convention well knows, because of any hostility I have against the taxation of the mines generally, but because I wanted to have it done in the way proposed by the amendment brought in by the gentleman from Storey (Mr. Chapin.) But inasmuch as that amendment has been lost, and I do not wish my record to stand contrary to my own convictions, I now change my vote, and vote "aye."

Mr. DeLONG. I change my vote for the purpose of giving notice of a motion to reconsider. I vote "aye."

The result of the vote was announced—yeas, 36; nays, 14—as follows:

Yeas—Messrs. Ball, Belden, Brady, Brosnan, Collins, Crawford, DeLong, Fitch, Folsom, Gibson, Haines, Harley, Hudson, Kennedy, Kinkead, Lockwood, Mann, Parker, Pearrance, and Mr. President—20.

Nays—Messrs. Banks, Chapin, Crosman, Dunne, Hale, Hervey, Mason, McClinton, Murdock, Proctor, Rhodes, Toner, Warwick, and Wetherill—14.

So the amendment offered by Mr. Nourse was adopted.

Mr. KENNEDY. Now I move that the report of the Committee, as amended, be adopted.

The PRESIDENT. There is an amendment pending.

Mr. CHAPIN. I offer an amendment.

Mr. DeLONG. I believe the question now is on the amendment offered by the gentleman from Churchill (Mr. Murdock.)

The PRESIDENT. A question has been suggested here, whether the adoption of this amendment, by the vote just taken, is not virtually the rejection of the amendment of the gentleman from Churchill, being a refusal to strike out. I would like to hear the views of members upon that, because I do not wish to make a ruling which is not strictly in accordance with parliamentary usage.

Mr. WARWICK. That is the very question to which we addressed ourselves this morning. It is undoubtedly the idea of parliamentary law that every member moving to amend a bill should be heard before the body, and that no motion should cut off any amendment which may be offered. Now, by taking the vote on the amendment of the gentleman from Washoe, we have virtually cut off all action upon the amendment of the gentleman from Churchill.

The PRESIDENT. The Chair thinks that that proposition covers the point, and will rule that the amendment of the gentleman from Churchill is in order. I do so, not that I am satisfied that the ruling is entirely correct, but in order that no gentleman shall be cut off from his privilege of offering an amendment.

Mr. WARWICK. That is the point.

Mr. KENNEDY. I rise for information. If then this motion is lost, is my motion in order? Unless other amendments are presented I presume it would be.

The PRESIDENT. It is difficult to determine in advance how much of pertinency there may be or may not be in the gentleman's amendment. The Chair thinks it is quite enough to decide questions as they arise.

Mr. CHAPIN. I would like to know when my amendment will be in order.

The PRESIDENT. An amendment to the pending amendment is in order at this time.

Mr. CHAPIN. I will offer it then after the Convention shall have acted upon the amendment of the gentleman from Churchill.

Mr. MURDOCK. If I understand the ruling of the Chair, it is that the motion I made is now in order. I suppose they from the vote just taken upon it, that I have failed to make myself understood.

The PRESIDENT. The vote has not yet been taken on the amendment of the gentleman from Churchill, and he is in order to speak to his amendment because the vote has not been taken upon it.

Mr. NOURSE. I rise to a point of order. The report of the Committee was amendment No. 1, and my amendment was an amendment to the amendment, or No. 2. Now is not the amendment of the gentleman from Churchill a third amendment? Was not it an amendment in the third degree when it was offered, and therefore out of order?

The PRESIDENT. The Convention has concurred in the amendment from the Committee of the Whole. The question coming up next on

adopting the amendment recommended by the committee, to that there have been different amendments proposed, in different stages of the proceedings of the Convention.

Mr. MURDOCK. Am I in order to explain?

The PRESIDENT. The gentleman is in order to speak to his amendment.

Mr. MURDOCK. I say I supposed, from the vote last taken, that I had failed to make myself understood by the Convention. I did not intend to vote that the mines should not be taxed, and I did intend to frame the amendment so as to say that all property shall be taxed, whether it be in mines worth a dollar a foot, or in lands worth a dollar an acre, or in anything else of value. I did suppose, because my early education taught me to suppose, that "all property" meant everything of value, and I do not want to stand up here and have this Convention misunderstand me, or think I took a position which I really did not take. I do want all property taxed. If mines are worth a dollar a foot, I want them taxed upon that dollar. When I say every species of property should be taxed, I mean that I want every species of property which claims protection under this State Government that is to be, to pay its proportion of the revenues of the State. I want every dollar of it taxed, for I do not want, as I said before, to mistake my calling. I did not come here to legislate. I didn't come here to so restrict the Legislature as to limit it to this or to that. I am perfectly willing that the mines should be taxed, and that every other dollar of property within the limits of the State that is to be should be taxed equally. And I did think that that article as I proposed to amend it expressed the idea most clearly that all property should be taxed equally.

The reason, and the only reason, why I objected to using those words—"personal realty," "chattel real," "chattel personal," "mixed," and so on, was because the legal fraternity had so mixed up those things as to blind and fuss me, and the Legislature I think will be composed of just as wise men as there are in this body. I did not want to be understood as standing here to advocate the doctrine that any property shall not be taxed for its protection, whether it be in mines, in cows, in ranches, or in anything else. So I struck out everything that I called surplusage, for the reason that I supposed "all property" meant all property, of every species, and every kind. I do not want to so trammel this question that it shall get before the people in a way that the people can be mistaken about it, in any particular. If a man has got a mine and considers it property, he is liable to pay taxes on it, just the same as if he had a yoke of cattle on which he is liable to pay a tax. All I am opposed to in the original section is that odious clause "including mines and mining property." If they had gone on and said—"all ranches and ranching property," "all tailors and tailors' shears," "all shoemakers and shoemakers' tools," and passed over everything else, I would not have objected a bit. [Merriment.]

Mr. NOURSE. I rise to a point of order. It is that the amendment to the amendment proposed by the gentleman from Churchill was to strike out the words "real and personal." Now the amendment I offered having been adopted, there are no such words to be stricken out, and therefore I submit that there is no such amendment, because we cannot strike out words which are not in the section.

The PRESIDENT. The gentleman from Washoe misapprehends the question. For the purpose of enabling the Convention to understand the amendment, it was stated that the effect of the vote, upon the report of the Committee of the Whole, would be to strike out the words "real and personal," but that I find is not exactly correct. On the contrary, it proposed to strike out all, and insert new words, and upon that view it was necessarily in order, as those words were embraced in the amendment offered by the gentleman from Washoe, to perfect the language, before taking the vote on striking out. The gentleman's amendment, perfecting the language proposed to be stricken out, having been adopted, the question now comes on striking out that language.

Mr. NOURSE. I had misunderstood the question.

Mr. MURDOCK. I was going on to say that I want to place myself in such a position before this body that I shall not be mistaken in regard to my motives and views. I am not taking sides as to whether mines shall or shall not be taxed, or ranches or any other species of property; but, as I said before, I did not come here to legislate, but to form a fundamental law, and to leave to legislation what legitimately belongs to legislation, in relation to discriminating as to what shall be taxable property and what shall not. And when we have said in this Article "all property," my education has not gone far enough to enable me to add to it. When I say "all property," I do not know how I can add to that, in any possible way in the world, and the addition of "mines and mining property" looks to me like surplusage. It looks to me particularly obnoxious, unless you also put in ranches, and the appurtenances thereto belonging, and then go on through all the varied descriptions of property which people ordinarily have in their possession. Now inasmuch as I think "all property" has covered the whole ground, I do not want to be considered by any member as opposing the taxation of the mines, because I am not. Inasmuch as they have the protection of the Government, I want them equally taxed with other property. But here is a thing I do know, and that is, that if we adopt provisions which will be of a distinctly legislative character and incorporate them into this fundamental law, our labor will go for naught. We have once had a ruling and a decision upon that question, by

the people themselves, and they will give the same ruling now as they did before.

Mr. DeLONG moved (at half-past 3 o'clock P. M.) that the Convention adjourn.

Mr. TOZER. I hope not, because I have a motion to make.

The yeas and nays were demanded on the motion to adjourn.

Mr. LOCKWOOD. I would like to explain my vote upon this motion. I am very tired of sitting here, and I understand, besides, that some gentlemen want recreation of a peculiar kind, and I am in favor of giving them a chance.

The question was taken by yeas and nays, and the vote resulted—yeas, 16; nays, 19—as follows:

Yeas—Messrs. Coffman, DeLong, Earl, Gibson, Hawley, Hervey, Hilton, McClinton, Murdock, Parker, Proctor, Tognini, Turner, Warwick, and Wetherill—16.

Nays—Messrs. Ball, Banks, Bolden, Brady, Brosnan, Chapin, Collins, Crawford, Dunne, Fitch, Folsom, Gallwey, Hudson, Kennedy, Kinkead, Lockwood, Lumsden, Shortridge, and Mr. President—19.

So the Convention refused to adjourn.

Mr. HAWLEY. I ask leave to change my vote with a view to a reconsideration. [Laughter.]

The PRESIDENT. It is not in order.

Mr. TOZER. I move that my colleague, (Mr. Ball,) have indefinite leave of absence.

Mr. BALL. Were the gentleman's colleague worth leave of absence he can ask for it himself.

Mr. TOZER. I wish to speak to that motion.

The PRESIDENT. The question is on the amendment offered by the gentlemen from Churchill.

Mr. BANKS. I understand that the motion is to strike out and insert, and that the proposition which it is proposed to strike out is the amendment offered by the gentleman from Washoe. Am I right?

The PRESIDENT. Yes, sir.

Mr. BANKS. Then I move to amend by the addition of the following language, which I will send up to the Secretary's desk. I propose to amend by adding that to the section as it stands, having been amended on the motion of the gentlemen from Washoe.

The PRESIDENT. I suggest whether, in order to prevent a complication of the question, it would not be better first to take the vote upon the amendments pending, and then to submit this amendment.

Mr. TOZER. I move that the Convention adjourn.

The PRESIDENT. The motion is not in order; no business having intervened since the Convention refused to adjourn. The question is on the amendment offered by the gentleman from Churchill.

The question was taken by yeas and nays upon the amendment offered by Mr. Murdock, and the vote was—yeas, 18; nays, 21—as follows:

Yeas—Messrs. Chapin, Crawford, DeLong, Dunne, Hervey, Hilton, McClinton, Murdock, Proctor, Tognini, Turner, Warwick, and Wetherill—18.

Nays—Messrs. Ball, Banks, Bolden, Brady, Brosnan, Coffman, Crawford, Earl, Fitch, Folsom, Gibson, Hudson, Kelley, Kennedy, Kinkead, Lockwood, Mesick, Parker, Shortridge, and Mr. President—21.

So the amendment was not agreed to.

Several members claimed the floor, amidst some confusion, and moved that the Convention adjourn.

Mr. BANKS was recognized by the Chair, and said: I now offer the amendment which I have sent up to the Secretary's desk. I move to amend the section by adding to it as already amended, this language—

The Secretary read as follows:

"Provided, That no tax shall be imposed on any mining claim, or possessory right thereto, which, during the year immediately preceding the time of making the assessment, has produced an amount of ore the value of which is less than one thousand dollars."

Mr. BANKS. I do not think I have been accustomed to inflict on the Convention speeches of great length, and I now ask the privilege of saying to the members of this Convention a few words, in all candor and sincerity, in reference to the position we occupy in regard to this Constitution, and the position we will occupy before those who sent us here. If I can get the attention of members—and I will say I do not intend to annoy the Convention by a speech occupying any considerable length of time—I want to say just this, when I can be heard: It is obvious, beyond all question, that there is in the Convention a very considerable majority of members who are determinedly and persistently in favor of taxing the mines, without any discrimination whatever. I have not the slightest fault to find with gentlemen entertaining those opinions, nor any objection to urge against their acting upon them here, and endeavoring to place them in the fundamental law of our State. With those gentlemen, personally, I say, I have no fault to find. But I want to say to them this, that after the experiment of last year, and what we have since learned of the public sentiment on this subject, it is the worst of folly for us to undertake to tax the mines, without any discrimination as to their intrinsic value, or as to their being prospecting mines, and still hope to prevail before the people. We who represent the mining counties have sought by every honorable means which our ingenuity could invent to join with the majority in the support of all the compromises proposed here, not only those which were within the bounds of reason, but also in some cases those which involved, as I conceived, an actual sacrifice of our dignity itself. Now, sir, we have not been met in a like spirit in any particular. All the compromises proposed from that quarter have been in the form of language strengthening their position, and making it more absolutely certain that mines of all kinds, whether mere "holes in the ground," or mines of vast intrinsic wealth, must inevitably be taxed. Sir, we send this Constitution before

the people, if the will of the majority prevails with this feature in it, and before the people, and upon the stump, if we are true to ourselves, and state what all sensible men must know is the legitimate construction of that Constitution, we must tell every man, be he a miner, or be he a farmer, that if that Constitution is adopted, mines of every kind and quality, according to their value, intrinsic or prospective, must be subjects of taxation.

I intend, life and health being spared, to return to my constituents at the close of this Convention, and there I shall be asked what the Convention meant by this, that and the other section. I would gladly take the stump, and endeavor, with what ability I possess, to advocate the adoption of the Constitution, because I want the glorious privilege of voting for Abraham Lincoln, to be the next President of the United States, and I want to enjoy all the privileges of a citizen of an independent State in the American Union; but if I am asked by the miners in my county, "Does the Constitution require the taxation of the mines?" I shall be compelled as an honest man to say, as I believe every man in the Convention will be forced to confess, that it does unqualifiedly and unreservedly require the indiscriminate taxation of mines of every kind. As a last proposition, therefore, I have sent up that amendment, providing that mines which during the year preceding the assessment have not yielded one thousand dollars, shall not be subjected to taxation. I propose that amendment in a spirit of compromise, in order to relieve from taxation those prospecting enterprises which all the members of the Convention, at the start, in theory at least, if not by their action, have conceded should not be subject to taxation. I want to discriminate between the valuable mines and those enterprises wherein there is no value of an absolute or positive character, but the value of which is simply that kind of value which depends upon a man's hopes or expectations—those mines which have really no taxable basis. If gentlemen from the agricultural counties feel disposed to adopt so trifling a concession in our favor as this, I shall at least be grateful, and I believe it will relieve the Constitution of much of the odium that would otherwise attach to it. Otherwise, I believe that, beyond all question, whatever hopes we may have in regard to the adoption of the Constitution, they will not be realized.

Mr. DeLONG. Mr. President, I have listened with feelings of wonder to the remarks of the gentleman from Humboldt (Mr. Banks,) who sits beside me, with whom I have been acquainted a great while, and for whose practical good sense and honesty of purpose I have the highest regard. When we came into this Convention we found here this clause which said that all property, both real and personal, including mines and mining property, should be taxed. Upon motion, that portion of the clause which specified mines and mining property was stricken out, the gentlemen from Humboldt voting to that motion, and gentlemen on this floor who are colleagues of mine, and the representatives of other mining counties, also voting for the motion. But twenty-four hours roll over this Convention, and these same gentlemen, including the member from Humboldt, in this same room, vote for another proposition, which in another declares, and which the gentleman from Humboldt admits, means universal taxation of the mines. Now what is the meaning of the action which gentlemen have taken? Why did they vote to strike out of the section that which seems to be unmistakable and plain—that which says in so many words that mines and mining property shall be taxed—and then vote into its place the language of the amendment of the gentleman from Washoe (Mr. Nourse,) which they admit means the same thing?

Mr. BANKS. I beg the gentleman's pardon; I did not vote for it.

Mr. DeLONG. Then I do the gentleman a wrong, and I retract with pleasure what I have said, so far as it applies to him, and I regret that I have even intimated it. But there are many others that did. They voted out one section, and then voted in another which meant the same thing. And having done that, it becomes my bounden duty to tell you, with the profoundest respect for the Convention—for I do not know but possibly the majority are correct, although I differ with them in their views—that I must, with deep and keen regret say that I believe, first, that your Constitution, containing a clause providing for an indiscriminate taxation of the mines, will be buried with indignation by the people, in the coming election, and in the next place, even if it should not be, it is a measure which looks to all time to come; it is a measure which looks to the detriment, the destruction, and ruin of the paramount interest of our Territory; it is a measure which is diametrically opposed to the views of those who sent me here, and to the sentiments of the very Convention which called me forward to pledge myself, when I was nominated. I did so pledge myself, and I have remained true to that pledge. And I say to those who have disagreed with me, that I believe it is my bounden duty to take that course which my duty dictates. That Constitution containing such a clause is wrong, and I would be a party to that wrong if I should seek to have it adopted by the people of this Territory. I believe it is therefore my duty, whenever this Constitution shall have engrafted into it a principle which I believe is wrong, which I believe deprives those whom I represent of their just rights, and their dearest rights, to act as such circumstances direct. I can see no hope in the proposition now offered by the gentleman from Humboldt, in the form in which it is offered. It seems to be the will of the majority of the Convention, cooperating with many of my own colleagues, that the indiscriminate taxation of the mines shall be the order of the day. With the wisdom of that

fashion I have no controversy. We have argued the question here, and it has been considered and discussed fully and ably. I have asked, without stating the reasons, which I thought it was proper then to state, for an adjournment, so that those who feel with me that their interests, or the interests of their constituents are endangered, might have an opportunity to meet and commit, and see if there was any possibility of arriving at an understanding with those who disagree with us, but even that poor privilege is also denied us by the majority.

Several Members. "Oh no, no!"

Mr. DeLONG. Not even an adjournment can be permitted, but final action is demanded while the power is held in their hands. I have only to say this, that I vote against this proposition, and against all others of that character, simply for the reason that I know it discriminates between men holding the same kind of property, and I cannot constientiously discriminate in a case of that kind. This Convention will take such action as it sees proper, but I will say, however, that I would like an adjournment, before that action is taken, to allow us an opportunity for some commitation, that we may confer together and decide upon taking that course of action which we may deem proper under all the circumstances.

Mr. BROSNAN. I now move that this Convention adjourn.

The question was taken by yeas and nays upon the motion to adjourn, and the vote was —yeas, 26; nays, 6—as follows:

Yeas—Messrs. Bell, Banks, Belden, Brady, Brosnan, Chapin, Collins, Crawford, Crompton, DeLong, Dunne, Earl, Fenton, Gibson, Hawley, Hovey, Hudson, Kinsell, Lockwood, Mason, McClinton, Murdock, Proctor, Stephens, Toner, Warwick, Wetherill, and Mr. President—26.

Nays—Messrs. Fitch, Haines, Kennedy, Nourse, Parker, and Stuart—6.

During the voting—

Mr. NOURSE. I desire to explain my vote. The Convention insisted on evening sessions last night, when things were working to suit these gentlemen, and they wanted no adjournment. Now I like this thing so well to-night that I vote "no."

The result of the vote having been announced, as above stated,

The PRESIDENT accordingly, at 9 o'clock, P. M., declared the Convention adjourned.

TWELFTH DAY.

CARSON, July 16, 1864.

The Convention met at nine o'clock, A. M., and was called to order by the President.

The roll was called, and all the members responded except the following: Messrs. Frizell, Haines, Hovey, Jones, Morse, Wellington, and Williams. Present, 32; absent, 7.

Prayer was offered by the Rev. Mr. NIMS.

The journal of yesterday was read and approved.

QUESTION OF PROXIES.

Mr. WARWICK offered the following resolution, which was read by the Secretary:

Resolved, That a majority of the Delegates present from any county be allowed to cast the vote of the absent members of the delegation.

The PRESIDENT. The Chair will rule the resolution out of order. It is a proposition before unheard-of in any legislative body.

Mr. WARWICK. I shall with great regret be under the necessity of taking an appeal from the decision of the Chair, and I would like to be heard on that appeal.

The PRESIDENT. The gentleman will state his grounds of appeal.

Mr. WARWICK. I shall do so most respectfully, sir. In the first place the decision of the Chair is predicated upon the supposition that we are here as a legislative body, or its equivalent, whose action would be a finality. Now, sir, I contend that the resolution I offer is in order, for this reason, that we are a different body altogether from a Legislature, where a personal representation is required. Neither are we a simple Convention, such as is called together by the people; but we partake of the character of both in such a degree that it is perfectly competent for this Convention to grant the privilege I ask if it shall see fit so to do.

The grounds on which I ask the privilege are as follows: The county of Lander, as is known to those who have taken the pains to investigate this matter, casts a vote of nearly two thousand, while the counties of Washoe and Roop, for example, cast a vote unitedly of from sixteen hundred to two thousand. But what is the situation, sir? We find these counties are here with a representation of five voters in this Convention, while the county of Lander, with its two thousand legal voters, is here with a representation of one single vote only. Now the foundation of our government—its very cornerstone—is laid upon the principle of representation by the people, and I should like to know what species of justice it is when two hundred and twenty people in the county of Washoe are allowed to have the same voice in the affairs of the government that two thousand people have in the county of Lander? I really do not know whether this resolution will meet with any favor in this Convention or not, but I have felt it a duty to the people I represent to make the motion, and if it is defeated I shall be able to let them know at least that their sole representative on the floor of this Convention did all he could to allow them to have as much to say in the formation of the instrument which we are about to submit to the people, as an equal number of people in any other portion of the Territory.

There is another principle which I think the Chair will readily recognize, and that is that

the action of a single individual should never be allowed to disfranchise a people. But what is the situation here? Nearly seventeen hundred of my constituents are disfranchised, by the unfaithful action of two of their representatives, while the counties in the immediate vicinity of the capital are represented by the full number of delegates to which they are entitled. There are certain good reasons, it may be, for this action, or rather non-action, on the part of those representatives, owing to the difficulty of getting here, but those are reasons which go to show why this resolution should meet with favor. I am well aware that those delegates have been derelict in their duty in not coming to the Convention, but I insist that the action of one single individual should not be suffered to disfranchise a people, and yet in my county six hundred and twenty voters are disfranchised by the neglect of duty of one man. Such a thing never was contemplated, certainly, in the theory of our government, and yet that is the situation. Six hundred people in Lander County would have had no more voice in this Convention, at any rate, than two hundred and fifty people in Ormsby or Washoe County. This is not a legislative body, whose action if adopted is a finality, or the case would be a different one. There is no single act which we can do that can or will become a law, until it is indorsed by the people. The action of a legislature, the members being chosen and sent up here by the people to speak their views, becomes a finality, and the law of the land. Without any subsequent reference to the people, that action becomes at once a law, which the people in their sphere are bound to obey. But that is not our case. There is no finality in our action, as nothing we do can become a law of itself, until first submitted to the people.

The PRESIDENT. Then how are the gentleman's constituents disfranchised? When the Constitution goes before them will not they have a voice in its adoption, or rejection, just as much as the people of any other portion of the Territory?

Mr. WARWICK. But in their primary action they are disfranchised. You might say the same in regard to a political convention. You have a precedent for the action I propose in every State, I think, and certainly you have in California. I maintain that it is the usual custom, or if not usual that it is certainly very frequent, to allow proxies in conventions.

The PRESIDENT. Did the gentleman ever know of an instance where a body assembled under a law of Congress, or a law of a Legislature, permitted votes to be cast by proxies? I think there is no such precedent.

Mr. WARWICK. But there is not in the history of the United States, from the fourth day of July, 1776, to the sixteenth day of July, 1864, a solitary precedent, nor in the wide world either, of a case where a charter was offered to a people under circumstances like those under which a charter is at the present time offered to the people of the Territory of Nevada. What has been the general rule, I might say the sole rule, in the formation and admission of States into the Union under the government of the United States? When the people have found themselves in a situation to form and carry on a State government they have come together of their own motion in convention, formed their State Constitution, and sent it up as a petition to Congress. There the petition was heard, and, other things being equal, a proper number of representatives were admitted as the representation of the new State in Congress. But our situation is wholly different; we have no parallel in history to the present offering of a charter to us.

And why is it offered? The circumstances which environ our country at the present time are far different from any which have ever surrounded it before, and from any, I trust in God, which may ever surround it again. There is a gigantic evil to be removed, and it has been found, I apprehend, that the strength of the government is not sufficient for the measure, and hence Nevada has been appealed to, to assist the government. And it is for that reason, notwithstanding the fact that a State Constitution has just been repudiated by us, because it contained a provision obnoxious to the whole people, that still the government comes forward and renews the offer of a State charter. Now as we are assembled under circumstances in every respect different from any similar body that ever convened before, under circumstances without any parallel in history, I contend that it is competent for this body to grant the privilege I ask, if it see fit to do so.

There are, I admit, certain points in which we resemble a Legislature, and there are certain points, too, in which we resemble a common State Convention. If we were solely a Legislature our action would be a finality, and if we were solely a State Convention we would not have the sanction of the General Government. Therefore, partaking of the character of both, we partake of the privileges of both, and as custom makes law, I maintain that the incorporation of this provision in our proceedings would not vitiate the action of the Convention. The fact must be apparent that it never was contemplated in the history of any republican government that the votes of two hundred and twenty people in one portion of the territory of that government, should be just equivalent to the votes of two thousand people in another portion. Equal representation is the theory of our government, and I insist that the action of any one member, or two members, should not be allowed to disfranchise thirteen hundred people in the county of Lander.

The PRESIDENT. Does the gentleman assume that in Washoe county there are only two hundred and twenty voters?

Mr. WARWICK. No, sir, I refer to the whole number.

The PRESIDENT. How many votes were polled in Lander County.

Mr. WARWICK. About two thousand at the election before the last.

The PRESIDENT. Does the gentleman know how many votes were cast there at the last election?

Mr. WARWICK. I do not know exactly, but there was no struggle there, for the simple reason that the Democratic party made no nominations. It was understood that they would not contest the election, and at my own precinct at least there was not a single vote cast, as a Democratic vote, in the entire precinct. The vote in Lander County was entirely a Union vote, as far as my knowledge goes, and if I am wrong I will thank any gentleman to correct me.

Mr. TAGLIABUE. I will correct the gentleman on one point; there were two thousand seven hundred votes cast in Lander County on the previous Constitution.

Mr. WARWICK. I accept the correction. There were two thousand seven hundred votes instead of two thousand. I wanted to keep within the bounds of the exact truth. I went to the Secretary's office this morning to get the exact figures, but the desk was locked, and I could not obtain them. That makes the justice of this proposition all the more apparent. At that time, however, Nye County was a part of Lander, and since that time it has been segregated; but even deducting the vote of Nye County it still leaves us over two thousand voters. The vote at the last election would be no basis whatever, because, as I have already stated, there were no Democratic nominations. The Democratic leaders publicly announced that they should not enter into the contest, and in the township I represent, where seven hundred votes were cast at the previous election, probably not more than one hundred and fifty votes were cast for delegates to this Convention. The people were entirely apathetic about the matter, and did not turn out to the polls, because the voting was all one way. But in the struggle on the former Constitution, submitted last fall, where both parties were in the field, there was a full vote, and I take that to be a fair basis of representation. Now I ask the question, is it fair that two hundred and twenty, or two hundred and twenty-five men, should have the same representation here that two thousand men in Lander have? And I ask whether the derelict action of one or two men should be allowed to disfranchise seventeen hundred people. Whether the resolution be adopted or not, I have felt it my duty to submit the matter to the Convention, and shall bow to its decision, whatever that may be.

Mr. DeLONG. I should like very much, if I could consistently with my duty to the Convention, acting under oath, to support this proposition, in the case of the gentleman from Lander. I am in full sympathy with him on almost every question which has divided the Convention, and I have found him an earnest, decidedly able, and in my humble opinion a very correct representative of those whom he has undertaken to represent. I would be very much pleased, therefore, were it in our power, to authorize him to represent all his constituents instead of a part, or rather instead of in part representing them, by casting only one vote. But I must disagree with him in the views which he has presented. I must regard this Convention in all respects as bounded and governed by the same rules of action as those which bind and govern a Legislature. We are a Legislative body, called together for a higher purpose than any mere State or Territorial Legislature, namely, to form a State Constitution; and the Enabling Act by which we are convened, prescribes what and who shall constitute the Convention. That Enabling Act does not provide that any one member shall have or exercise greater powers than any other member, and it would be a usurpation of power, in my opinion, to allow any man in the Convention the privilege of casting more than one vote. I say I wish, under the circumstances, it were otherwise, because I have been in everything which has been presented to the Convention a coöperator with the gentleman from Lander. We have worked together in almost everything, and if we could confer this privilege upon any man in the Convention, so far as I am concerned, I think I should prefer to give it to him. But believing that it is not supported by law and authority, I must oppose his proposition, and say that the ruling of the Chair is correct, and I think that such must be the voice of a majority of the Convention. Believing that to be the case, I will suggest to the gentleman from Lander that perhaps it would be better for him to withdraw the proposition.

The PRESIDENT. I will state briefly the grounds of the ruling I have made. As the gentleman from Storey (Mr. DeLong) has very correctly remarked, this body cannot be otherwise than vested with all the powers and authority of a Legislative body, at least so far as those powers are defined by the Enabling Act. The Congress of the United States, acting under the authority of the Federal Constitution which we have adopted, possesses the power and authority of prescribing the qualifications of voters, and the terms and conditions upon which they shall assemble and elect delegates to frame a Constitution. It has prescribed what shall be the qualifications of individual voters, and has provided further, that when we assemble we shall take a certain oath of office, and shall proceed to declare the Constitution of the United States to be the supreme law of the land. And then the Enabling Act goes further, and says that the persons who have thus assembled as representatives of the people, shall proceed to do certain things. Having complied, to all intents and purposes, with the requirements of that act, this body is invested with full legislative power and authority; and it would be, in my judgment, an absurdity in the extreme to

suggest that a man in Lander County, or it may be in Utah Territory, or in the State of California, without having presented himself here as a delegate, and without having taken that oath of office, shall be allowed to vote in this Convention. A precedent cannot be found for such procedure. It may be, as the gentleman from Lander supposes, that there is no precedent for the manner in which this Constitution is to be framed, but that matters not; certainly no precedent can be found for the action he proposes, but on the contrary, in my judgment, the Enabling Act is absolutely inhibitory of any such action. These are the reasons which govern the Chair in ruling out of order the proposition which the gentleman from Lander has presented, and the question now is: Shall the decision of the Chair stand as the judgment of the Convention?

The question was taken, and decided in the affirmative. So the decision of the Chair was sustained.

ADJOURNMENT OVER.

Mr. PARKER moved that the hour of adjournment to-day be twelve o'clock, noon, and that the Convention then adjourn to meet at two o'clock, P. M. on Monday.

The question was taken, and, upon a division, the motion was agreed to—ayes, 20; noes, not counted.

TAXATION.

The Convention resumed the consideration of Article X, entitled Taxation, the immediate question being upon the amendment offered yesterday by Mr. Banks, to add to the section, as previously amended, the following words:

"*Provided*, That no tax shall be imposed upon any mining claim or possessory right thereto, which, during the year immediately preceding the assessment, has produced an amount of ore, the value of which is less than one thousand dollars."

Mr. BANKS. It will be remembered, Mr. President, that that amendment was offered in a spirit of compromise. I now find that a number of gentlemen with whom I have had occasion heretofore to differ on this question are quite disposed to meet their fellow-members in a spirit of compromise, but upon a proposition somewhat different. In order to enable them to do so, I will ask leave to withdraw this amendment, but before that, I would inquire whether it will be in order, if this be withdrawn, to offer a substitute for the whole section?

The PRESIDENT. Not as a substitute, but an amendment would be in order.

Mr. BANKS. Very well, then I will withdraw that amendment.

The PRESIDENT. If there is no objection the gentleman from Humboldt will have permission to withdraw the amendment.

No objection was made, and the amendment was therefore withdrawn.

Mr. KENNEDY. I move to amend the section by substituting the following, which I will ask the Secretary to read.

The Secretary read as follows:—

SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, excepting mines and mining claims, the proceeds alone of which shall be subject to taxation, and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.

Mr. KENNEDY. After the heated discussion which we had last evening upon this question, there seemed to be such a conflict almost in the views of members as to render it impossible to come to any conclusion in regard to this matter, but during the hours of last night and this morning I have conversed with a number of gentlemen in regard to it, and this amendment seems to meet their views. Although it differs somewhat from my own views, yet in a spirit of compromise, in order that we may agree upon something, I, for one, am willing to vote for this amendment, and I think that in practical result will be the same as any of those amendments which were offered by gentlemen who wished to include the taxation of the mines; and as the people are interested in the practical, not the mere theoretical question, I think that this amendment ought to satisfy them.

Mr. BROSNAN. For the reasons assigned by my worthy friend from Lyon, who has just taken his seat, and after consultation with members generally, from the time of the adjournment last night until the meeting this morning, I have also determined, for the sake of unity and harmony in the Convention, to support this amendment.

The PRESIDENT. The Chair thinks the members of the Convention have hardly considered this fact: It appears to the Chair that the amendment offered by the gentleman from Storey (Mr. Chapin) last evening is not only substantially, but in words, the same as the one now offered.

Mr. DELONG. But that amendment was not voted on, and my colleague complained of that fact. It was not voted upon because the amendment of the gentleman from Humboldt (Mr. Banks) somehow got in ahead of it.

The PRESIDENT read from the Secretary's minutes of yesterday's proceedings the amendment offered by Mr. Chapin, as follows:

SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real, personal and possessory, according to its true value in money, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes; provided, that in the taxation of mines the proceeds only shall be taxed.

Mr. DELONG. Does the Chair decide that that is the same as the present amendment?

The PRESIDENT. It is not only substantially the same, but identical. The only difference is, that the language is transposed. And that amendment was lost by a vote of—yeas, 4; nays, 29. The Chair therefore rules this amendment out of order.

Mr. DeLONG. The Chair will observe, in the first place, that the proposition of my colleague yesterday, I believe, was offered in Committee of the Whole.

The PRESIDENT. No, sir; we were not in Committee of the Whole yesterday at all.

Mr. DeLONG appealed from the decision of the Chair, and a long discussion followed upon the question of order involved.

The question—shall the decision of the Chair stand as the judgment of the Convention?—was taken by yeas and nays, and the vote was—yeas, 10; nays, 22—as follows:

Yeas—Messrs. Belden, Brady, Crawford, Folsom, Graves, Hawley, Kinkead, Lockwood, Nourse, and Stevenson—10.

Nays—Messrs. Bell, Banks, Brosnan, Chapin, Collins, Crossman, DeLong, Dunne, Earl, Fitch, Hovey, Hudson, Kennedy, Mason, McClinton, Murdock, Parker, Proctor, Tagliabue, Toser, Warwick, and Wetherbee—22.

So the decision of the Chair was not sustained.

The question was stated on Mr. Kennedy's amendment.

Mr. NOURSE. I offer an amendment to the amendment.

Mr. DeLONG. I believe the section stood amended by the gentleman from Washoe, (Mr. Nourse;) is not this therefore an amendment to an amendment?

The PRESIDENT. The amendment of the gentleman from Washoe had been adopted.

Mr. DeLONG. Did not the Chair entertain the amendment of the gentleman from Humboldt (Mr. Banks) as an amendment to an amendment.

The PRESIDENT. There was but one matter pending, before the gentleman from Washoe offered this last amendment, and as an amendment to the amendment it is in order.

Mr. DeLONG. All right; then let us come to a vote upon it.

The SECRETARY read Mr. Nourse's amendment, as follows:

"Insert after the words 'mining claims,' the words 'farms and farming property, mills and milling property.'"

Mr. NOURSE. I wish to state my reason for offering that amendment. It is in order that we may preserve some uniformity of rule in regard to taxation. If I had had time I would have lengthened out the list, and endeavored to include everything in it. It is in order that the rule adopted, (which is the rule I believe all over this country—that taxation shall be equal and uniform,) may be such that no one interest shall be exempted from the burden of supporting the Government, unless all others are exempted. If it is right that mines and mining property shall be exempted, or only taxed upon their proceeds, it is certainly right that the mills should only be taxed in the same manner, and I will leave out the question as to farms for the present. Gentlemen say that the mills would be good for nothing without the mines; now I ask would the mines be good for anything without the mills? What is your ore good for, unless you have the means of reducing it?

Mr. FITCH. I think it would be a good plan to tax the proceeds of the mills; it would certainly yield a larger amount of revenue.

Mr. NOURSE. Very well; I am glad I have made a convert. I hope other gentlemen will be as candid, and if they are already convinced, by the reading of the amendment, and the mere statement of one reason for its adoption—if they find themselves immediately convinced in their own minds that it is right—I hope they will disregard any caucus dictation, and vote for this amendment.

Mr. DeLONG. What does the gentleman mean by "caucus dictation?" There has been no dictation here, and no attempt at dictation to any man on this floor.

The PRESIDENT. It is not in order for the gentlemen to reflect upon the action of members. The gentleman must confine himself to the amendment.

Mr. NOURSE. When I use the word "caucus" I mean nothing offensive by it. I have caucussed, as I suppose other gentlemen have, thousands of times, and I use the word in no offensive sense. I only mean to say there is a difference of views this morning from what there was yesterday. Perhaps "thousands of times" is a little too large a term, and I will take that back and say I have caucussed with gentlemen, to see if their views corresponded with my own, or if we could make them correspond, and I supposed it was a usual thing; but if gentlemen are sensitive about the term I will not use it.

Mr. DeLONG. I was not objecting to the term "caucus;" it was the word "dictation" to which I objected. I say there has been no dictation whatever.

Mr. NOURSE. Very well; I will say "caucus agreement."

Mr. BROSNAN. I deny that I have been in any caucus, and any intimation of that kind, so far as I am concerned, is totally false and unfounded.

Mr. NOURSE. I have not referred to the gentleman at all.

Mr. BROSNAN. The gentleman from Washoe referred to me in this light—in saying that members had changed their views by reason of caucus dictation. Now I say that so far as that applies to me it is absolutely false and unfounded, because I say I have not been in any caucus, and my judgment is influenced only by the dictation of my own conscience.

Mr. NOURSE. Mr. President, I have not alluded to the venerable gentleman from Storey in any way or manner, and I have had no means of knowledge as to whether or not he has changed his position. I believe the only vote he has given to-day was on a simple question of parliamentary law. Am I right? I certainly hope the gentleman does not think I would intimate that because a gentleman votes yea or nay on a question of parliamentary law, that

is any indication as to his sentiments upon the main question before the Convention. I have not alluded to him in any way or manner, and I trust that the gentleman will withdraw the offensive expression he used when he learns that I did not have him in my mind, and did not allude to him in the slightest degree.

Mr. BROSNAN. I will say in reply to the gentleman, that my action here to-day was somewhat different from what it was yesterday. I voted yesterday for the gentleman's proposition, with the view of having the subject reconciled. I saw that a great commotion was about to take place, one which I should deplore, because I thought it would not be conducive to the honor and the future reputation of the Convention. I wished the subject determined here to-day in a manner to give entire satisfaction to the members of this body, and I had expressed myself in favor of the proposition of the gentleman from Lyon, immediately after the adjournment. It seems now that there was a meeting of gentlemen, after the adjournment last evening, who agreed upon a proposition to be submitted to the Convention which they thought would be satisfactory. I did not have part or parcel in that caucus; I was not there at all. And when the gentleman used the terms he did this morning, my vote having been slightly different from what it was yesterday, upon the question as then presented to the Convention, his remarks, as I supposed, necessarily involved my action, and I could not sit here patiently under the imputation which I thought was cast upon me. If the gentleman has no reference to me, and I believe that he has not, since he disavows it, I am sorry I used the words I did use, and, therefore, I cheerfully withdraw those remarks. I have deemed this explanation due to the other members, who stand with me in the Convention on this question.

Mr. NOURSE. I am obliged to the gentleman. I feel, however, that I am very unfortunate, in some way or other, and I confess that I am not in a frame of mind to say what I would like to say, and will therefore defer it. I do not know why it is, but it seems that I cannot speak here without some gentleman supposing that I intend some imputation. I wish gentlemen to understand that I do not ever intend to cast any personal imputation upon any gentleman on this floor. Will gentlemen understand that once for all, when I assure them of the fact? I do not like to be dragged before the public in this way.

Now I wish to say in regard to this amendment, that if there be any justice in exempting the mining interest, there is the same justice in exempting the milling interest; and if there is any justice in exempting the milling interest, there is the same justice in exempting the farming interest. The proposition as now adopted, first provides that the property of the State shall be assessed and taxed at a uniform and equal rate. It then goes on and adds the words "possessions and possessory claims." And why? Because simply that it has been openly declared here, that there are certain rights which it is admitted men hold, and for which other men are willing to pay money, that are not included by the term "property." The gentleman from Storey (Mr. DeLong) remarked, not on the floor, but in conversation, in regard to the Whitman claim in Como, I recollect, that a gentleman had paid a hundred dollars a foot for it, and yet the gentleman from Storey insists here that it is not property according to his definition of property. He has given us elaborately his definition of property, and it is evident that it is his opinion as a lawyer—and he is a lawyer of great reputation—that those mining claims will not and cannot be taxed unless we provide for the taxation of possessions and possessory rights. Then if mining claims are not liable to be taxed, under that clause, I insist, and I do not think any gentleman will pretend to the contrary, that it must follow that possessory surface claims cannot be taxed either, because if in the case of the mines they are the property of the United States, and the property of the United States cannot be taxed, then the fact certainly is the same with regard to all other possessory claims upon the lands of the United States. If therefore we merely provide for the taxation of "property" we shall have but a very small basis for taxation in the State. If this be so, if as able a lawyer as the gentleman from Storey is of opinion that the word "property" does not include that which we call "feet"—that it does not include our mining claims, and so on, and therefore they cannot be taxed under such a provision—then, I repeat, that under the same provision surface rights cannot be taxed, except where the fee has passed, as it has in the case of a few ranches up and down our valleys here, from the United States to the occupants. I say that leaves, as the only taxable property in the State, what little land there may be—very probably not more than three or four millions worth in all—of which the fee has passed from the Government to the individual holders. Therefore it is that the words "possessions and possessory rights" have been incorporated; and that phrase covers, as the gentleman from Storey (Mr. DeLong) admits, all these rights of possession which the State courts recognize as existing in the individual—rights to the possession of property of which the fee is owned by the Government. Do we not want to cover that? Do we not want at least to cover the surface claims? Of fourteen millions of dollars—I think that is the figure—of real estate in Virginia, as now assessed under the Territorial law, not a dollar of it all is owned in fee. The "property" is in the United States, and all that the owners have is the mere right to the possession. That right is recognized in the courts as between man and man. It is regarded as presumptive evidence of a grant from the United States. Now we all want to include that property. All the gentle-

men here who are so earnest against taxing the mines still go in for taxing that property. But I contend that those words "possessions and possessory rights" cover that property, and it does no more, if we accept the definition of the gentleman from Storey, and other gentlemen here, of the law; but it leaves the question beyond a doubt that that property must be taxed. Now then if it is right to tax these possessory rights to surface property, why is it not equally right to tax possessory rights to mining property?

What are these mining rights? Gentlemen have talked and talked about a tunnel, in which has been sunk so many thousands of dollars, and from which its owners have not yet obtained any ore, and it is uncertain whether they will ever get any, and therefore they say we ought not to tax that tunnel, and all that sort of thing. That may all be true, but such a tunnel as that could not be taxed, under the wording of the amendment, as property. But what the prospector has by virtue of his possession, and which the Government has not, is the mere right of possession to the tunnel. If I understand it—and I have not been here as long as some other gentlemen, and have had nothing to do with mining—before the prospector goes on to run his tunnel, or to do other work, he stakes off his claim, and by the laws of the mining neighborhood or district in which it is situated he is allowed a monopoly of that ledge thus staked off, while he is prospecting and working it. If he keeps up the amount of work upon it required by those laws or regulations adopted by the miners of his district, he has a monopoly of that ledge. Is not that so? Now that monopoly is what is taxed under those words "possessory rights and claims." It is not his tunnel. He may sink fifty or a hundred thousand dollars in his tunnel, if he pleases, and not be taxed a dollar upon it. But here is a right which our courts protect him in the enjoyment of—the right to the monopoly of that ledge. He thinks that right is valuable, or if he did not he would not touch it, of course. Now if the right to that monopoly, and that protection by the Government which keeps everybody else away, and prevents them from touching that ledge, until he shall have concluded to abandon it, is worth five dollars, or worth ten dollars, or worth a thousand, or a hundred thousand dollars, and will sell in the market for cash for that sum, ought it not to be taxed, like any other property?

And is it necessary that there should be any proceeds from that claim before it can be taxed? Suppose that out in Lander County, which is so ably represented here by the gentleman (Mr. Warwick) who spoke this morning, a man has a ledge which promises to be wonderfully rich. At present he does not think it worth while to work it, but he and his associates may decide to hold on to it. I do not know how many feet a man can hold, but I believe he can work it around—"whip the devil around the stump," as the saying is,—I suppose he is entitled to use his friends' names, and in that way perhaps he can hold a thousand feet. Now, I say, suppose a man goes on to this ledge, and finds it surpassingly rich, but just at present he does not see fit to develop it. Still he is protected in his possession.

Mr. EARL. Mr. President, the debate is taking a very wide range, and all this ground has been traveled over again and again. I dislike very much to make a point of order, but I will suggest to the gentleman from Washoe that the time is getting very short.

Mr. NOURSE. I will not take five minutes longer. ["Leave! leave!"] I do not wish to argue the matter for the sake of manifesting any personal tenacity of purpose, but I am simply making a point which I think has never been distinctly made before. ["Leave! leave!"]

The PRESIDENT. The gentleman will proceed.

Mr. NOURSE. Now such a man, we will suppose, has a ledge which he can sell in the market for a large sum of money. People are so well convinced of its value that perhaps men would be readily found who would give him half a million for it, and he could sell it at any moment he pleased. Yet he is comfortably off, and is disinclined to sell. He knows that a railroad will be built ultimately, or that something else will come about which will make it more advantageous to him to hold on to his ledge for five years, or a dozen years, and therefore he does not care to undertake the development of the mine at present. I say is it not right, if he does not choose to get any proceeds which can be taxed from that claim, or, even without referring to the proceeds at all, is it not right that he should pay his proportion of the public burdens, on that valuable privilege, or that possessory right which the Government secures to him? And would it not be a gross inequality to allow a man to hold on to such a claim, only doing nominal work upon it, and so monopolizing it, and all its advantages, without any taxation, because he does not choose to get out his millions of dollars from his claim, as the Gould & Curry does, and thereby enrich the State, but prefers rather to hold on to it for years? Is it not right that his privilege and possessory right, secured to him exclusively and entirely, by the laws of the State, should pay a tax, just as other property does, all over the State, without any reference to the proceeds which he gets or does not get?

Mr. FITCH. I have but a few words to say, and shall not occupy the time of the Convention five minutes. When I came to this Convention, I occupied, upon this question of mining taxation, something of an anomalous position. Being a representative of a mining constituency, I was nevertheless then, as I am now, in favor of the taxation of the mines. I favored the amendment offered by my colleague from Storey (Mr. Tozer,) which proposed to strike

out the words, "including mines and mining property," and in so doing did not consider that I abandoned my position as a friend of mining taxation, because I believed then, as I believe now, that with the section as it would then stand, requiring property of all kinds, real and personal, to be taxed, the mines must necessarily be taxed, and that no Legislature could fail to tax them. Such was my understanding of that language, and although it is true that one or two gentlemen, occupying high positions at the bar, have differed with me as to the construction of that language, yet there are others of equally high standing who believe that my construction was correct. The language was sufficient to satisfy my own mind at least, and I did not think that, while favoring the taxation of the mines, and yet favoring the proposition of my colleague to strike out the words "including mines and mining property," I was at all inconsistent.

Again, an amendment was offered here by the gentleman from Washoe (Mr. Nourse) to include in the section the words "possessions and possessory rights." I voted for that amendment, because it was more satisfactory to the delegates from the agricultural counties, the obnoxious words "including mines and mining property" having been been stricken out, and because, in my judgment, it did not make the question of mining taxation either stronger or weaker. I believe that the first amendment would have been sufficient. But since then another amendment or proposition introduced by the gentleman from Lyon, (Mr. Kennedy), and now pending before us, has been brought forward, which proposition (with some slight verbal amendments that I shall take the liberty to suggest,) will receive my support, and for this reason: I came here to aid in securing the formation, in the first place, of as good a fundamental law as it was possible for this Convention to construct; and after that, so far as it might be in my power, to aid in shaping the action of the Convention in such a way as to secure the adoption of that fundamental law, because if we make a Constitution exactly according to the views of certain gentlemen, it may prove to be obnoxious to the people and be therefore voted down, and so our labors will be destroyed.

Now I conceive the duty of the members of this Convention to be—first, to make a Constitution as perfect as possible, and secondly, to make it as much in consonance with the views of the majority of the people of this Territory as possible, and then to try to secure the adoption of that Constitution. Laying this down as the base upon which to shape my action, at least—not being willing to abandon any important principle merely for expediency—I yet do not think I am justly liable to the charge of inconsistency merely because I am not afflicted with that mulish obstinacy which would lead me to insist on my individual ideas, and the particular language which I might individually prefer, being carried through and adopted as a condition precedent to my support of any Constitution which we may frame. I am here rather in a spirit of compromise, and a sincere desire to meet the wishes of the majority, so far as it is possible. So, acting in the spirit of a sincere desire to frame such a fundamental law as will be acceptable to the people, I am responsible to my God and to my constituents alone for my action, and shall permit no man to impugn my motives unchallenged. I shall permit no man, in a spirit of captiousness, or in a spirit of constitutional scoldishness—if I may be permitted to coin a word—to load me with reproaches, to read me lectures for my action here, to impute motives that do not belong to me, or to denounce me as inconsistent or recreant in my action, when such action is based upon the bed-rock proposition of framing a Constitution which will be acceptable to the people. I should think myself possessed of a spirit of most arrogant self-conceit, instead of a spirit of devotion to principle, if I should attempt in that way to arraign gentlemen for a departure from principle, simply because they differ from me. Sometimes, I conceive, gentlemen are apt to mistake their own individual opinions for principle. I start out here upon the basis of framing a Constitution which will be acceptable to the people, and in so doing, favor my own views so far as possible, while conceding my own views as far as may be, without any sacrifice of principle, to the views of other gentlemen; and I do not think it is either courteous, or even to my mind, parliamentarily decent, to read lectures to others upon their duties and responsibilities, when they are responsible to no one but their constituents. I shall permit no man to do it to me, sir.

Now in regard to this amendment of the gentleman from Lyon—it says that the Legislature shall provide for a uniform and equal valuation for taxation of all property, real, personal and possessory, excepting mines and mining claims, the proceeds of which alone shall be subject to taxation. I may be in error, but I think a construction could be placed on that language—perhaps a very nice construction—which should say that all mines and mining claims may be exempted from taxation, and the Legislature can tax the proceeds if it please. I will submit to the mover whether it would not read better to say: "As shall secure a just valuation for taxation of all property, real, personal, and possessory; provided, that the proceeds of mines alone shall be subject to taxation."

Mr. DeLONG. Why, that is the same thing.

Mr. FITCH. I think there is a material difference. After the word possessory, you say here, "excepting mines and mining claims," and in that way you leave the door open to that construction.

Mr. DeLONG. I suggest that we change the language around, and let it read: "except that the proceeds of mines and mining claims alone

shall be subject to taxation." That would except all mining claims which are without proceeds.

Mr. NOURSE. I rise to a point of order. The question is on the amendment to the amendment offered by myself. I have no objection, at a proper time, to a further amendment, but the question is now upon my amendment.

The PRESIDENT. The Chair did not understand the gentleman from Storey (Mr. Fitch) to offer an amendment.

Mr. FITCH. No, sir; but merely a criticism on the language. I say, where it says "for the taxation of all property, real, personal, and possessory, excepting mines and mining claims, the proceeds alone of which shall be taxed"—

The PRESIDENT. It says here—"shall be subject to taxation."

Mr. FITCH. Well, "subject to taxation." I say the Legislature, and the Courts, in my judgment, might place a construction upon that language, which would not only exempt mines and mining claims, but the proceeds also.

Mr. DeLONG. [in his seat.] When it says that the proceeds of mines shall be subject to taxation, does the gentleman think that they could exclude those proceeds?

The PRESIDENT. The Chair hopes that gentlemen will not interrupt, unless in a parliamentary way, by rising and addressing the Convention.

Mr. FITCH. I will endeavor to make my meaning clearer, for either the language of the amendment is rather obscure, or else I am uncommonly stupid this morning. Where it says the Legislature "shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, excepting mines and mining claims," that would have meant, if nothing followed it, that the Legislature shall not prescribe such regulations as shall secure a just valuation for taxation of mines and mining claims; and when you add to that "the proceeds of which alone shall be subject to taxation," I understand that a construction could be placed upon it which would allow the Legislature to tax the proceeds, if they choose so to do, and if they did not, to allow them to exempt even the proceeds. It seems to me that under the language of the section, as it now reads, they could exempt the proceeds of the mines. Now, as that is probably not the object of the gentleman from Lyon, as the amendment is offered in a spirit of compromise, as it is designed to secure the taxation of the proceeds of the mines, and not the mines themselves, I suggest, although not in the shape of an amendment, at present, that the object could be achieved by the mover making a slight change in the language. I am not particular as to the language.

Mr. KENNEDY. Will not this suit the gentleman? Instead of "subject to taxation," at the end of the clause, let it read "shall be taxed." Will not that cover the gentleman's idea? It will then read—"excepting mines and mining claims, the proceeds of which alone shall be taxed."

Mr. FITCH. I rather think, on a cursory view of the matter, that that would be sufficient.

Mr. DeLONG. We have but an hour of time. Under the resolution we have adopted we must adjourn at twelve o'clock, and I suggest that we should come to a vote.

Mr. FITCH. I have occupied but an infinitesimal portion of time compared with my colleague.

Mr. DeLONG. I did not call my colleague to order; but this is an important question, and members are desirous of going home. The Convention must adjourn in an hour from now.

Mr. FITCH. I have nearly finished what I was about to say. It says here—"for the taxation of all property, real, personal, and possessory, excepting mines and mining claims, the proceeds of which alone shall be subject to taxation." It seems to me that the change suggested by the gentleman from Lyon would meet the objection made.

Mr. HOVEY. Having been charged outside with inconsistency, I wish to be placed fairly and squarely on the record upon this question.

The PRESIDENT. Does the gentleman rise to a question of privilege?

Mr. HOVEY. Yes, sir; partly to a question of privilege. I am in favor of taxing the mines, but I am not in favor of prescribing in the Constitution the mode by which that shall be done. Two years ago I was in favor of taxing the gross proceeds, and by request of the Committee on Ways and Means of the Legislature I drafted a law to that effect, but having made one assessment under that law I became satisfied it would not meet the wants of the people. It did not bear equally on all. The gross proceeds, under that law, in the county of Storey, amounted to about four and a half millions of dollars, while the amount of bullion shipped from the county, in the same year, was about twelve millions, I believe. The Legislature at its last session also became convinced that the law would not meet the wants of the Government, and they changed it so as to tax mines like other property. Now, sir, in making the assessment under that law we found that owing to the depreciation of the mines it worked unjustly. For instance, the Burning Moscow, less than six months ago, was worth three hundred and eighty dollars a foot, while to-day it is worth but fifteen dollars. I have come to the opinion finally, after seeing a synopsis of the law passed by the late Congress, that we have got to come down at last to one mode of taxing the mines, and that is to tax the bullion, under the stamp of the Government. And as my views are different from those of the balance of this Convention, I have to go for the next best proposition, and that is, I conceive, the amendment offered by the gentleman from Lyon, (Mr. Kennedy.)

Mr. TAGLIABUE and others demanded the

yeas and nays on the amendment offered by Mr. Nourse, to insert the words "farms and farming property, mills and milling property."

Mr. HAWLEY. I shall certainly vote against any such absurd proposition.

The question was taken by yeas and nays on Mr. Nourse's amendment, and the vote was—yeas, 8; nays, 30—as follows:

Yeas—Messrs. Crawford, Lockwood, and Nourse—3.

Nays—Messrs. Ball, Banks, Belden, Brady, Brosnan, Chapin, Collins, Creaman, DeLong, Dunne, Earl, Fitch, Folsom, Gibson, Hawley, Hovey, Hudson, Kennedy, Kinkead, Mason, McClinton, Murdock, Parker, Proctor, Sturtevant, Tagliabue, Toone, Warwick, Wetherill, and Mr. President—30.

So the amendment was not agreed to.

Mr. KENNEDY. With the consent of the Convention I would like to make a slight change in my amendment. I will strike out the words "subject to taxation," and insert instead the word "taxed," so as to read "excepting mines and mining claims, the proceeds of which alone shall be taxed."

The PRESIDENT. I suggest to the gentleman that the word "alone" appears to have a peculiar significance in that connection. I only call his attention to it.

Mr. STURTEVANT. I believe a member has a right to speak fifteen minutes on any question, but I do not believe I have spoken that length of time altogether in the Convention. However, I shall not bother the Convention now but a very few minutes. If I remember correctly the proceedings which we have had on this very important question, it is now in rather a strange fix. Now, sir, my view of this matter is plainly this: By taxing the mines we can sustain a State Government, and without that we cannot. As to this thing of taxing the proceeds, it is said if you want experience buy it. Now we have tried the taxing of the net proceeds, and what did we get? "Nought from nought and nought remains." [Laughter.] Under the head of gross proceeds, I believe the District Attorney has decided—or at least it was so decided in Storey County—that they meant net proceeds, and so we got a tax on some four millions of dollars. Now this is one of the most simple and the shortest of questions—it should be at least—that ever came before any Convention in the world. We came here with a full and distinct understanding of it. Is there any gentleman here who, before he came to this Convention, had not heard this important question discussed? If so he must have been deaf. [Laughter.] Therefore I do not know why we could not just as well in the start have said "yes" or "no" upon it. It is the plainest question in the world. With the assistance of the mines we can sustain a State Government, and without that assistance we cannot, and we do not want to try it. We know that we are in debt, as a Territorial Government, and we have the best of authority for positively knowing that we can scarcely maintain that government, or at least that we have failed to maintain a Territorial Government, so far, and we find ourselves largely in debt. Now in the statutes of 1861 you will find a revenue bill taxing the net proceeds of the mines. Then we got nothing. In the statutes of 1863 you will find that we took the gross proceeds of the mines. Then we got four millions. In the statutes of 1864 you will find that the mines are taxed indiscriminately.

Mr. CHAPIN. Allow me to correct the gentlemen, in one respect. The assessment under the law of 1862 was four millions nine hundred and eighty-seven thousand dollars—nearly five millions.

Mr. STURTEVANT. That has been harped upon also. Now a few of us, I myself among others, came over here a few years ago and helped to find the mines. We have no objection, however, to your coming here and working them. You are welcome to come here and work the mines as much as you please, and we are glad to see you do it. I have been here ever since. I fought my way here, and probably shall be here longer than any of you, unless I should cease to live. But one of the material objects of having a State Government will be, as has already been suggested here, the protection of the mines. The General Government has attempted to impose a tax upon our mines in a way that I think is not altogether right, and we ought to have representatives in Congress to tell them so. Just at this present time we find ourselves in a dilapidated condition in this Territory, as you all know, and it could not be otherwise, but we look for improvement. Now this is, I believe, the fourth day that we have been trying to get at this very point. What is the use of being so long about it? What kind of a tangled-up mess is it that it should take so long to unravel? Night before last we decided in a great measure, or at least it was the prevailing idea, that the mines should not be taxed, but the next morning they uncovered a masked battery, that blew up all that, sky high. [Laughter.] Last night the prevailing idea was, and it seemed to be satisfactory to all, that the mines should be taxed, and this morning there is another masked battery again, and we find ourselves in another fix.

Mr. NOURSE. The Chair does not seem to call the gentleman to order, and I will protest against allowing him to make insinuations against gentlemen.

Mr. STURTEVANT. Is your name "Masked Battery?" [Laughter.]

Mr. NOURSE. I am speaking for others, not for myself; I have had several masked batteries sprung upon me, and therefore I protest against anything of the sort.

The PRESIDENT. The gentleman from Washoe will proceed.

Mr. STURTEVANT. I would not like to hurt the gentleman's feelings, because I am somewhat tender-hearted myself, but I hold myself responsible, and will apologize if anything I say should unintentionally hurt anybody.

Now much has been said here about the valley counties, but the valley counties, at least

that portion of them which I in part represent, are as much interested in the mines as Storey County; that is, in proportion to the population. I think I am correct in that, and I will say further, that for all that we are willing to establish a State Government, and we are willing to tax our mines to do it—perfectly willing. But without that we are perfectly satisfied that we cannot maintain a State Government, and we do not want it.

Mr. NOURSE. The question I believe is on the original amendment of the gentleman from Lyon (Mr. Kennedy.) I have an amendment to offer to that. I am not quite sure that it comes in the right place, but I propose to annex to the amendment of the gentleman from Lyon the following proviso:

"Provided, further, that the rate of taxation upon the annual proceeds of the mines shall be so fixed as to make the burden of taxation upon the owners of mines as nearly as possible equal, in proportion to their property, to that upon the owners of other property."

My reason for offering this amendment is, to remedy the palpable inequality that would arise from the taxation of one kind of property merely upon its income, and another upon its absolute value. I suppose this amendment will meet gentlemen's ideas, because I do not think this has been thought of. I suppose the intention of gentlemen is that only mines producing ore shall be taxed, and to make sure of that they want to tax only the proceeds. That makes it sure that no mine will have to pay a tax that does not produce ore. But I suppose that the ore producing mines, say in Storey County, for example, those that are getting out any ore, are getting out—other gentlemen may know better than I do—I will set the value at least at fifteen or twenty millions, and I do not know but I might set it as high as fifty millions of dollars a year. Now I suppose that gentlemen do not mean to tax the proceeds of those mines which, under the Assessor's appraisement, at the last return, amounted to only four or five millions of dollars, upon that amount, while if that property had been taxed in the shape of property the owners would have had to pay on fifty or sixty millions of dollars—the value of their property in the market. I do not suppose they intend for a moment any such inequality as that.

Mr. HAWLEY. Does the proposition involved in the gentlemen's amendment amount to this, that if the proceeds of a mine are assessed by the Assessor, say at three millions of dollars, and the time of hearing motions to raise or decrease that assessment passes without any motion to amend, then those three millions of dollars shall be taxed at the rate of perhaps sixty per cent. on the one hundred dollars, upon the whole three millions of dollars' worth of property, whatever its character shall be, while property of a different character is assessed at only one or two per cent. on the one hundred dollars?

Mr. NOURSE. Something in that way. It is avowed in the amendment of the gentleman from Lyon that the rate of assessment and taxation is to be equal, but it seems that the mines themselves are not to be taken as a basis of taxation, but the proceeds only. I think the proceeds of the mines in Storey County last year amounted to only four millions nine hundred and eighty-seven thousand dollars, so that the owners of those mines, which are really worth, say fifty millions of dollars, only pay a tax of one per cent., on four millions nine hundred and eighty-seven thousand dollars, while the owners of other property have to pay the one per cent. on the whole amount of all they are worth. Now I do not suppose that gentlemen mean that. They mean only to tax the proceeds, but they do not mean that the tax shall apply to one man's income only, and to another man's gross property. I propose that the Legislature shall be left at liberty, if you are going to tax the proceeds through the Legislature, to make such an arrangement as will make the taxation equal.

Mr. DELONG. Believing as I do that there is an object and design to prevent a final vote until members are absent from this hall, for the first time in my life I move the previous question.

The PRESIDENT. The gentleman may not indulge in personal reflections as to what may be the object of gentlemen.

Mr. DELONG. I am not indulging in personal reflections. It is my right to state what I believe to be the truth. My object is to go on and adopt this Article, and then proceed with our work of framing a Constitution, and for that purpose I move the previous question.

The PRESIDENT. The Chair will state that there is a stage to leave for Virginia after the twelve o'clock stage to-day, and if members desire to speak further to this question, I would suggest that we can suspend the rules and continue in session until one o'clock. However, that is merely a matter of suggestion. The previous question has been demanded, and the question is: Shall the main question be now put?

Mr. LOCKWOOD. I ask leave to make one remark. ["Leave! leave!"]

Several members objected.

Mr. NOURSE and others demanded the yeas and nays upon ordering the main question.

The question was taken, and the vote was—yeas, 18; nays, 15—as follows:

Yeas—Messrs. Banks, Chapin, Crosman, DeLong, Dunne, Earl, Fitch, Hudson, Kennedy, Mason, Mc Clinton, Murdock, Parker, Proctor, Tagliabue, Toner, Warwick, and Wetherill—18.

Nays—Messrs. Ball, Belden, Brady, Brosnan, Collins, Crawford, Folsom, Gibson, Hawley, Hovey, Kinkead, Lockwood, Nourse, Shurtevant, and Mr. President—15.

So the main question was ordered to be put.

During the voting—

Mr. BALL. Though I desire to see this question brought to a vote at once, yet I will never vote for the previous question. I vote "no."

Mr. DUNN. I vote "aye," for the reason that I do not think it can possibly be said that much debate has been had on this question. We have had four days debate already on this question.

Mr. HARE. I vote "aye" for the same reason.

The PRESIDENT. I never voted for the previous question in my life, and I certainly will not when it is moved upon so important a matter as this.

The result of the vote having been announced,

The PRESIDENT stated that the first question was on the amendment offered by the gentleman from Washoe (Mr. Monroe.)

The question was taken by yeas and nays, and the vote was—yeas, 9; nays, 24—as follows:

Yeas—Messrs. Belden, Brady, Crawford, Fitch, Fisher, Gibson, Kinkead, Monroe, and Stuttemeier—9.

Nays—Messrs. Bell, Banks, Beatson, Chapin, Gibbs, Crumpton, DeLong, Dunne, Earl, Hawley, Hoyer, Hubert, Kennedy, Lockwood, Mason, McClinton, Murdock, Parker, Proctor, Tagliabue, Tuttle, Warwick, Wetherill, and Mr. Beardsley—24.

So the amendment was not agreed to.

Mr. HOVEY. I voted "no" for a reason which I wish to explain. ["No, no!"] I voted "no" because I think the Legislature has that right already.

Mr. BANKS. So do I.

The question recurred on the amendment proposed by Mr. Kennedy.

Mr. FITCH. It has been modified somewhat, and I ask to have it read as it now stands.

The SECRETARY read as follows:

Section 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, excepting mines and mining claims, the proceeds of which alone shall be taxed, and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.

The yeas and nays were demanded on the adoption of the amendment, and the Secretary proceeded to call the roll.

Mr. COLLINS (when his name was called) asked to be excused from voting on this amendment.

Several members objected.

The PRESIDENT. Objection is made, and the Secretary will call the gentleman's name.

Mr. COLLINS. I desire to explain my vote. I have given my views—

Mr. PARKER. [interrupting.] I rise to a point of order—that it is not in order to explain a vote under the previous question. I think if the President will examine the rules he will find it so.

The PRESIDENT. The gentleman will proceed.

Mr. COLLINS. If I am in order I will proceed. I expressed my views yesterday upon this same question, substantially, and I feel exceedingly unwilling to do anything which will embarrass the matter now. My whole aim, from the beginning, has been to effect a satisfactory compromise, though I am decidedly in favor of a system which shall tax all property equally, throughout the State. One objection I have in my mind to giving my vote in favor of this amendment is, that it is going to array all the productive mines against our Constitution. It is going to do an absolute injustice to many of our productive mines. Now the Gould and Curry mine, for example, with twelve hundred feet, if assessed at the highest market value per foot which it has attained during the past year, at a tax of one per cent., will pay only thirty thousand and nine hundred dollars; but by a tax upon the gross proceeds, which as reported last year amounted to five millions six hundred thousand dollars, at the rate of one per cent. it would have to pay fifty-six thousand dollars—an increase over and above the taxation on the mine of twenty-five thousand, one hundred dollars, or nearly eighty-seven per cent. It looks to me like a piece of very gross injustice. Yet I find that the representatives of our mines feel that this is the best thing that can be done for their interest, or that would be anything like justice. If they think so, certainly they ought to be the best judges, and I must misunderstand this question. Under the circumstances it is the best thing, I suppose, that can be done, and therefore, though very reluctantly, and to a great extent against my strongest convictions, because I think it is a violation of the rights of those producing mines, I will have to give my vote, if I am compelled to vote, in favor of the amendment of the gentleman from Lyon, (Mr. Kennedy.) I vote "aye."

Mr. FITCH. For the reasons expressed by my colleague, (Mr. Collins,) I also vote "aye."

Mr HAWLEY. One word in explanation of my vote. I cannot for the life of me see that the amendment of the gentleman from Lyon meets the difficulty which has surrounded us from the very commencement of the contest which has lasted so long. I have heretofore expressed my views on the subject as clearly as I was able to do so. I think, unless we strike out the first part of the section which provides that the rate of taxation shall be uniform and equal, the amendment of the gentleman from Lyon can have no proper place in our fundamental law. I should infinitely prefer, as the representative of a constituency in favor of the taxation of the mines, to vote directly upon a proposition asserting positively that the mines shall be taxed. I therefore vote "no."

Mr. HOVEY. I vote on this amendment as a compromise—"aye."

Mr. KENNEDY. I rise, in explanation of my vote, to state that I do not vote for this amendment at the dictation of any assembly of gentlemen. I did have a consultation on the street with two members from Storey County, although I do not know that either one was in any caucus on this subject. When I left them I told them I would consult our delegation, and if

the proposition was satisfactory to the majority of the Convention, and to our delegation, I would go for it, and do what I could to have it adopted. I have offered it as a compromise, as I offered one before, which was rejected, and believing that this is the best I can do, I vote "aye."

Mr. McCLINTOCK. I believe it is well known by every gentleman on the floor that this provision does not meet with my entire approbation, yet I shall vote "aye," for reasons assigned, in part, by the gentleman from Storey, (Mr. Collins,) and also for reasons already given by other gentlemen. I vote for it, because I believe it is the best we can do. It is not as good as I would like to do, but inasmuch as gentlemen on this floor have taken position in favor of taxing everything, possessory and otherwise, every mining claim, and, as some express it, every "hole in the ground," and it may be every hole out of the ground, I shall vote for this amendment. It is not just what I desire, but I believe it is the best that we can obtain.

Mr. LOCKWOOD. I voted "no" for substantially the same reasons as those which have been given by the gentleman from Douglas, (Mr. Hawley.)

Mr. MURDOCK. For reasons which have been very clearly stated—and my own position has been well defined upon that point, and it is known how I stand—for the sake of a compromise I vote "aye."

Mr. SOURSE. I wish to give a reason for my vote, which is, that notwithstanding all the votes that have been cast upon my claim to vote upon principle, I still claim the right to vote upon principle. I believe this amendment is unjust and wrong in principle, in that it makes a distinction between different classes of our people, and different classes of their property—between property owned by different classes. For that reason I find myself unable to vote for it. And so far as a compromise is concerned, I have to say that I have not been so much as asked whether I would compromise or not. It was not submitted to my consideration, for one, and I believe many other gentlemen can say the same thing. And now, when it is attempted to be pushed through by means of springing the previous question, I certainly cannot vote for it. I vote "no."

Mr. STURTEVANT. I want to explain my vote. I am going to vote "no" for certain big reasons. Members say they vote for the amendment for compromise; I would like to know where they get it. Some compromises take only a part, but they take it all and leave us none. That is my opinion. Among the material objections I have is one on account of certain "jayhawkers," known as "Montgomery street sharpers." They go into the best mines we have, get a controlling interest in them, and when they find they have got immense beds of ore lying there they will commence building up somewhere else, diving down and digging these "holes in the ground," and running bed rock tunnels. And then they commence levying their assessments of a hundred dollars a foot, if you please, at a time. They will keep diving away at every place except the right one, when they know all the time precisely where that is, until people get tired of paying assessments. That is not the question here, I know, but that is where the "jayhawkers" come in. I want them taxed, as well as the rest of us. I do not know but the proposition may be disputed, but I think the operation of it will be recognized by most of the members here. These are what I call big reasons. I like for one to see every thing go on an equality, and if this is equality I cannot see it. I tried to get my eloquent friend from Storey (Mr. DeLong) to explain it so that I could, but he himself, it seems to me, does not exactly see it, and I say that with all respect to the gentleman, by all means, because I am satisfied that he is a good lawyer.

Now consistency is generally supposed to be a jewel, but the question is who wears it? I do not go to any man, I do not go even to lawyers, to ask them their opinion as to how I shall vote, because I have an opinion of my own, and that is the most I have got, and when that is gone I do not claim that there will be much left of me, but so long as I do have that, I claim to vote according to my own opinion. I vote "no."

Mr. TAGLIABUE. This seems to be an amendment which I can hardly understand. I am something like the gentleman from Churchill (Mr. Murdock) in this respect, being of very limited comprehension, but on the whole I will vote "aye."

Mr. TOZER. I shall vote "aye" on this amendment, although I consider it one that is wrong in principle, mistaken in its policy, and injurious in its practice. I consider it wrong, mistaken and injurious to the great paramount interest of this Territory—the interest from which we all derive all the prosperity we have in the present, or expect to have in the future. Yet I vote "aye."

The PRESIDENT. I desire to say a single word, and that will serve as an explanation of my votes, both upon this and previous amendments. As I have heretofore stated, I desire to see formed a State Constitution such as we will be able to submit to the people, and convince them that it will be for their best interests to form a State Government, and that such Government, when formed, will not be grievously burdensome in the way of taxation. I attempted yesterday to demonstrate to the Convention, by facts and figures which in no single instance have I heard questioned, that by taxing the mining as well as other property within the State, we would have an amount of property serving as a basis of taxation which would enable us, with an economical administration, to support a State Government; but by taxing only the gross proceeds of the mines, and all other property, we would be compelled to levy an onerous and burdensome tax. And now I come down to a proposition which is to my

sized appetites, namely, that the Legislature has no power to tax the gross proceeds of the mines. That being apparent, we must show the people that in order to support this State Government they must be taxed one dollar and twenty five cents on each one hundred dollars valuation, whereas now, under a Territorial Government, they are only taxed thirty cents on the one hundred dollars. Again, I certainly conceive, as the gentleman from Storey (Mr. Collins) has remarked, that, of all proposed modes of taxation, this of taxing the gross proceeds is the most unjust and unequal that can be devised. Now for the reason that we cannot and ought not to attempt to convince the people of this Territory that their interests are to be subserved by paying a tax four times as great as they now pay, for the support of the Government, and because the people cannot bear the burden which they will necessarily be required to, in order to support that government, under this provision, and because, in my opinion, no distinction should be made in the mode of taxing the property of the people of this State, I am constrained to vote "no."

The result of the vote was announced—yeas, 23; nays, 10—as follows:

Yeas—Messrs. Bell, Banks, Brosnan, Chapin, Collins, Crawford, Crosman, DeLong, Deane, Earl, Fitch, Hoey, Hudson, Kennedy, Mann, McClinton, Murdock, Parker, Proctor, Tagliabue, Toser, Warwick, and Wetherill—23.

Nays—Messrs. Bolden, Brady, Folsom, Gibson, Hawley, Kinkead, Lockwood, Nourse, Sturtevant, and Mr. President—10.

So the amendment was agreed to.

Mr. CRAWFORD. I give notice that on Monday I will move for a reconsideration of this vote.

Mr. DuLONG. I ask if the main question is not on the adoption of the section as amended.

The PRESIDENT. The question is on the adoption of the report as amended.

Mr. NOURSE. I move that the Convention adjourn.

The PRESIDENT. The motion cannot be entertained under the previous question.

Mr. DuLONG. I do not understand that we are amending a report; I understand that it is on the adoption of the section.

The PRESIDENT. The effect is the same; it is really the adoption of the section as amended. The question is on the adoption of the report, and the section, as amended on motion of the gentleman from Lyon (Mr. Kennedy.)

The question was taken, by yeas and nays, and the vote was—yeas, 23; nays, 9—as follows:

Yeas—Messrs. Bell, Banks, Brosnan, Chapin, Collins, Crawford, Crosman, DeLong, Deane, Earl, Fitch, Hudson, Kennedy, Mann, McClinton, Murdock, Parker, Proctor, Tagliabue, Toser, Warwick, and Wetherill—23.

Nays—Messrs. Bolden, Brady, Folsom, Gibson, Hawley, Kinkead, Nourse, Sturtevant, and Mr. President—9.

So the report, and the section, as amended, were agreed to.

Mr. CRAWFORD. I give notice that on Monday I shall move to reconsider the adoption of the report.

Mr. DuLONG. I move that we reconsider the vote now.

Mr. BANKS. I move to indefinitely postpone the motion of the gentleman from Storey to reconsider.

The PRESIDENT. A notice having already been given of intention to move a reconsideration on a subsequent day, I do not think it is competent for the Convention to entertain the motion to reconsider now.

Mr. DuLONG. But Jefferson's Manual does not provide that a notice to reconsider lays it over. On a previous occasion I gave notice in the same way, and it was held not to suspend the standing rule. I therefore respectfully appeal from the decision of the Chair.

The PRESIDENT. There has been, according to my recollection, no such ruling made by the Chair as the gentleman states. Last evening a notice to this effect was given, but it was subsequently withdrawn.

Mr. FITCH. As I understand it, it is one of the commonest practices of parliamentary bodies, when a notice is given by some gentleman who desires to prolong the consideration of a question, to move a reconsideration at once in order to bring it to a close. I undertake to say there is no precedent in any parliamentary body for any ruling that a notice to reconsider will prevent the immediate reconsideration.

Mr. STURTEVANT. The gentleman is mistaken; on the contrary, the provision is that a notice to reconsider can only be called up the day following.

The PRESIDENT. The Chair will be obliged if the gentleman from Storey will cite the authority.

Mr. BANKS. There is no authority for the decision.

The PRESIDENT. The appeal is before the Convention. The question is, shall the decision of the Chair stand as the judgment of the Convention.

Mr. NOURSE. Does not a privileged question take precedence of that motion?

The PRESIDENT. The gentleman will state his privileged question.

Mr. NOURSE. It is this: I claim to have my protest entered upon the journal of the Convention, against the action of the Convention in adopting the amendment of the gentleman from Lyon.

Mr. BANKS. I wish to make a motion.

Mr. DuLONG. That is not a question of privilege. The gentleman has no privileged question.

Mr. NOURSE. I wish to be informed, because I am accused of misrepresenting the gentleman, whether I was correct in understanding the gentleman to say that his amendment had been freely consulted about.

The PRESIDENT. The gentleman can have his protest entered on the journal. The ques-

tion is on the appeal from the decision of the Chair.

Mr. BANKS. Mr. President,—

Mr. NOURSE. I rise to a question of order.

The PRESIDENT. The question is on the appeal.

Mr. BANKS. I move that the hour of adjournment be postponed fifteen minutes.

Mr. NOURSE. I rise to a point of order, and I am not to be prevented from stating it. I understand that there is a motion already before the Convention, and that there is an appeal from the decision of the Chair, in regard to that motion. I understand that there is a motion pending, and that that motion must be put before any other can be entertained. I claim that the question shall be put on the appeal, and I call for the yeas and nays.

Mr. FITCH. I rise to a question of order. When a motion is made, either to adjourn or to extend the time for adjournment, no other question can be put or entertained.

Mr. NOURSE. It is now past twelve o'clock, and I insist that the rule be enforced.

The PRESIDENT. The hour of twelve o'clock having arrived, according to the resolution adopted this morning, I declare that the Convention stands adjourned until two o'clock on Monday afternoon.

The Convention accordingly, at twelve o'clock, adjourned.

THIRTEENTH DAY.

CARSON, July 18, 1864.

The Convention met at two o'clock, P. M., and was called to order by the President.

The roll was called, and all the members responded except the following: Messrs. Ball, Belden, Chapin, Fitch, Jones, Morse, Nourse, Wellington, and Williams. Present, 30; absent, 9.

The journal of Saturday was read and approved.

LEAVE OF ABSENCE.

On motion of Mr. KINKEAD, leave of absence for to-day was granted to Mr. Nourse.

Mr. TOZER asked leave of absence for himself, for to-day, which was granted.

On motion of Mr. DeLONG, leave of absence for to-day was granted to Messrs. Chapin, Fitch, and Ball.

Mr. McCLINTON. I have already staid here longer than I expected to when I came, and as I have some other duties to attend to—matters which cannot be neglected—I ask indefinite leave of absence; promising, however, that if possible, I will remain until the Convention shall finally adjourn, and will be in attendance as much as possible at all times; and in any case I will not be away, if I find that my presence is absolutely necessary to preserve a quorum, so as to enable the Convention to proceed with its business.

The question was taken, and indefinite leave of absence was granted to Mr. McClinton, in accordance with his request.

On motion of Mr. BRADY, leave of absence for to-day was granted to Mr. Belden.

Prayer was offered by the Rev. Mr. NIMS.

SCHEDULE.

Mr. DeLONG. By request, I offer this resolution:

Resolved, That there be appointed by the President a Committee on Schedule, to be composed of one member from each county represented, with instructions to report as early as possible—the President to be a member thereof.

Mr. DUNNE. I think it will be necessary to take up one portion of the Schedule separately, because there is a portion of it which will necessarily involve the necessity of considerable figuring.

Mr. DeLONG. The committee will be a general committee, and can be subdivided. They can select a certain number of the committee, and set them specially to doing the work which the gentleman refers to.

The question was taken, and the resolution was adopted.

The PRESIDENT subsequently appointed as the committee, under the resolution, Messrs. DeLong, of Storey; Dunne, of Humboldt; Kennedy, of Lyon; Haines, of Douglas; Wetherill, of Esmeralda; Warwick, of Lander; Belden, of Washoe; Lockwood, of Ormsby; Proctor, of Nye; and Murdock, of Churchill.

EDUCATION.

Mr. COLLINS. I offer the following resolution:

Resolved, That a Committee of five, on Education, be appointed by the President, with instructions to report as soon as practicable—the President to be added thereto.

Mr. WARWICK. I will suggest to the mover of that resolution that that will make a committee of six.

Mr. COLLINS. I have no objection to that.

Mr. WARWICK. I would suggest that we have a committee of five, including the President.

Mr. COLLINS. Very well; I will accept that.

The PRESIDENT. It occurs to me that this is a very important committee—that matters of the greatest importance will come under its supervision. I think a committee of five would scarcely give the Convention a fair representation, and I will suggest that it be increased to seven.

Mr. COLLINS. I will agree to that.

Mr. WARWICK. I will suggest the following as a substitute, if the gentleman from Storey will accept it:

Resolved, That a committee of seven, to include the President, be appointed by the President, on Education, with instructions to report as soon as practicable.

Mr. COLLINS. I accept it.

Mr. DUNNE. I do not perceive that it is

necessary to have that committee appointed, and I really think it will delay our proceedings very much. I know there are subjects involved which will have to be discussed, and they will be discussed just as much on the report of a committee as they would without. Many members are already on different committees, and I doubt very much whether it will not delay our action. I do not believe there is any necessity for such a committee.

Mr. COLLINS. I was moved to present that resolution on account of the present change in our Constitutional provision in regard to taxation. The Article on Education, in the old Constitution, was based upon the idea of the general taxation of the mines, and it occurred to me, not only in that respect, but also in regard to the various provisions in our public land system, that the article might require a good deal of alteration. I thought, therefore, that a Committee might lay the foundation, at least, so as to have the Article on Education perfectly consistent with the present Constitution, and thereby save a great deal of the time of the Convention. I do not urge the matter, however; the only object I had in view was to facilitate and hasten our business, and I do not know but the gentleman from Humboldt is correct in saying that it will not save time or avoid discussion. The idea I had was to remodel that Article, so as to be in harmony with the general arrangement of the Constitution.

Mr. HAWLEY. I wish to ask a question. The gentleman from Storey (Mr. Collins) refers to the different manner in which the public lands are proposed to be disposed of by the present Constitution, as I understand him; I would ask whether the clause proposing to give the five hundred thousand acres of land to the Pacific Railroad Company, for railroad purposes, has not been entirely done away with?

Mr. COLLINS. No, sir; I think not. Every State receives, by virtue of its becoming a State, five hundred thousand acres of land from the General Government, for school purposes, if I am not greatly mistaken. I know I gave attention to that subject in the last Convention, and I am impressed with the idea that this five hundred thousand acres of land is a donation for internal improvements, but we also get the sixteenth and thirty-sixth sections of land in each township for school purposes, and this five hundred thousand acres of land, given for internal improvement, was also applied for school purposes. Then, in addition to that, we get thirty-six thousand acres for each member of Congress, for an Agricultural College, if I am not mistaken.

Mr. BANKS. Independently of the policy involved, I hope the committee will be appointed, for the purpose of reporting the facts necessary for us to know in order to take intelligent action on the subject. I hope the committee will be appointed for that purpose, if for no other.

The question was taken, and the resolution was adopted.

The PRESIDENT subsequently appointed as the committee, under the resolution, Messrs. Collins, Hawley, Crawford, Crosman, McClinton, and Folsom.

FINANCE AND STATE DEBT.

Mr. TOZER, from the Committee on Engrossment, reported correctly engrossed Article IX, entitled Finance and State Debt.

Mr. TOZER. In connection with this report from the Engrossing Committee, I beg leave to say, that Section 3, of Article IX, refers to that clause of the preceding article, which provides for a donation of three millions of dollars to the Pacific Railroad, and it may be proper to amend that section at some subsequent stage. I call attention to the matter now, in order that some other member may move an amendment, if it is thought proper, as I may not be here when the subject comes up.

Mr. KINKEAD. It will have to be corrected, undoubtedly, to correspond with the preceding Article.

Mr. TOZER. Since this Article was ordered engrossed, the clause to which I have alluded was stricken out of the preceding Article—the clause providing for a donation of three millions of dollars to the Railroad.

Mr. STURTEVANT. It appears to me a little awkward, now, inasmuch as this Article has been engrossed.

Mr. GIBSON. This Article is correctly engrossed. The amendment was made in the other Article.

Mr. TOZER. This Article was passed to engrossment previously, and it has been correctly engrossed as passed. But in consequence of the amendment to the preceding Article, in order to be consistent this Article should be amended when it comes up on its final reading, and I presume it will then be within the power of the Convention to amend it so as to correspond.

The PRESIDENT. It can undoubtedly be amended hereafter.

PACIFIC RAILROAD.

The SECRETARY, (by leave of the Convention,) stated that Article VIII had been retained in his hands, and not handed to the Committee on Engrossment for the reason that the gentleman from Storey, (Mr. Fitch,) had given notice of his intention to move a reconsideration of the vote upon the adoption of section nine of that article. Subsequently, the motion to reconsider was made and carried, and a motion to recommit with instructions to strike out a portion of that section prevailed, but a motion to insert other words was lost. At that stage of further action upon the section was suspended, and the Secretary now desired to know what further disposition should be made of the article.

Mr. HOVEY. It occurs to me that we have have not yet finished the consideration of the

article, and that further action remains to be had upon it by the Convention.

Mr. BROSNAN. My colleague, (Mr. Fitch,) informed me that he did not intend to press his motion to reconsider.

The PRESIDENT. If I am not mistaken, the gentleman from Storey informed the Convention that he withdrew the motion to reconsider.

Mr. EARL. I move that the article be ordered to engrossment.

The PRESIDENT. The Chair will state to the gentleman that it will be in order to move to order the article to be engrossed at a proper time, but there is another matter now under consideration.

Mr. CROSMAN. My recollection is that Section 9 of Article VIII has never been adopted. My impression is, that at the time of our adjournment we had arrived at that point in the consideration of the article, but it was not acted upon. I desire to see some further amendment made to that article, and therefore I want it to come up in its regular order.

The PRESIDENT. The Chair will state, in order that gentlemen may understand the position of Article VIII, that it had been ordered engrossed, and came up on its third reading, when the gentleman from Storey, (Mr. Fitch,) moved to recommit it with instructions. The motion to recommit was lost, but a motion to strike out a certain portion was carried. The gentleman from Storey then gave notice of his intention to move a reconsideration, but subsequently he withdrew that notice. The article was on its third reading, and had been read down to and including section nine, and when it comes up again it will be on its third reading.

Mr. HAWLEY. I wish to give notice to the Convention that I, or some one else, will propose an amendment to that section, with the view of granting State aid to a certain railroad.

The PRESIDENT. Notice is not necessary. The amendment can be moved when the article comes up, and it cannot come up at this time without a suspension of the rules.

Mr. EARL. Is my motion to order the article engrossed in order at this time?

The PRESIDENT. No, sir; we are now considering the subject of the engrossment of another Article.

Mr. BANKS. What is now before the Convention?

The PRESIDENT. The Committee on Engrossment have reported Article IX. The Secretary having concluded the reading of the report, the article goes upon the general file.

TAXATION.

Mr. BANKS. On Saturday last I moved to indefinitely postpone a motion to reconsider the adoption of Article X, entitled Taxation. With the consent of the Convention I will now withdraw that motion.

No objection being made, the motion was withdrawn.

Mr. CRAWFORD. I gave notice on Saturday that I would move that reconsideration, but not desiring to occupy the valuable time of the Convention further in the discussion of the question, I beg leave to withdraw my notice of reconsideration, and ask to have my vote changed from the affirmative to the negative on the passage of that article.

No objection being made, Mr. Crawford's name was directed to be recorded in the negative upon that vote.

Mr. DELONG asked leave to withdraw his motion to reconsider, and no objection being made the motion was withdrawn.

Mr. HAINES. I was not present on Saturday when the vote was taken on Article X, and I ask leave to have my vote recorded in the negative.

Leave was granted, and Mr. Haines' vote was directed to be recorded accordingly.

Mr. DELONG. I voted in the affirmative on the amendment offered by the gentleman from Washoe, (Mr. Nourse,) for the purpose of moving a reconsideration. As that places me a little crooked on the record, with the leave of the Convention, I would like to change that vote from the affirmative to the negative.

No objection being made, the change was accordingly directed to be made on the record.

Mr. DELONG. I presume that under the operation of the rule, Article X now goes at once to the Engrossing Committee; I ask the Chair if that is the case?

The PRESIDENT. Yes, sir; if there is no objection it will be so referred.

The article was referred accordingly.

Mr. TOZER. The Committee on Engrossment, to which was referred Article X, entitled Taxation, beg leave to report that that article is correctly engrossed.

Mr. DELONG. Now, in order that this thing may be passed, and that we may have no further trouble on its account, and that it may be out of the minds of members, I ask that it be put upon its third reading and passage now.

The PRESIDENT. It will be necessary to suspend the rules.

Mr. DELONG. I make that motion.

The question was stated on the motion to suspend the rules.

Mr. STURTEVANT. I would like to know how that Article came to be engrossed, and by what order?

Mr. DELONG. It was ordered engrossed by the Convention, and the report was made after that order.

Mr. STURTEVANT. But how came it to be actually engrossed, and by what order?

Mr. TOZER. It was ordered engrossed within the last five minutes.

The PRESIDENT. The Chair thinks no question can be raised, inasmuch as there was no objection to receiving the report of the Committee on Engrossment.

Mr. DELONG. Under the rules, as soon as the vote was taken, on Saturday, the article

would necessarily go to the Engrossing Committee, were it not for the notice of reconsideration, which would naturally hold it over until to-day, but the Engrossing Committee nevertheless had it engrossed, and to-day, when it was referred to that Committee, the manual labor of engrossing it had already been performed. It was only necessary then as a matter of form to report it back as correctly engrossed. I assure the gentleman from Washoe that it is all regular; the article has pursued its regular course.

Mr. STURTEVANT. It may be all regular, but I do not see the point. It was ordered engrossed to-day, and it had no business to be engrossed before.

Mr. DeLONG. There is nothing unusual in that.

Mr. TOZER. If the Engrossing Committee should see fit to engross the Constitution of the United States, I do not know that the gentleman from Washoe would have a right to complain or object.

Mr. STURTEVANT. Exactly; but I just want to show the absurdity of it. The Committee had engrossed it, when they had no right to suppose that it would not be reconsidered.

Mr. PARKER. I believe the Article has been in the hands of the Engrossing Committee about five minutes, since the gentleman withdrew his notice that he would to-day move a reconsideration, and I do not suppose that it is the business of the Convention to inquire whether or not the Engrossing Committee were able to have it engrossed in that time, so long as it is in fact correctly engrossed.

Mr. STURTEVANT. After that explanation I withdraw my objection to the absurdity of the thing, and give the Committee credit for very quick work.

Mr. BANES. If now any gentleman wishes to test this matter further, I will vote against any suspension of the rules in order to give him a fair opportunity.

Mr. DeLONG. So will I. What I want is to facilitate business, but if any gentleman does not acquiesce in the former action of the Convention, or is at all anxious to test the matter further, I will vote against the suspension of the rules.

Mr. LOCKWOOD. I will state that there is at least one. Not that I wish to delay the Convention, however.

Mr. BANES. Very well; I will vote against suspending the rules.

Mr. DeLONG. I will withdraw my motion for a suspension of the rules.

[Mr. BANES in the Chair.]

The PRESIDENT asked leave of absence for himself for this afternoon, stating that he had business which imperatively required his attendance elsewhere.

Leave of absence was granted accordingly.

FINANCE AND STATE DEBT.

The Convention proceeded to the consideration of business on the general file, and Article IX, entitled Finance and State Debt, came up on its third reading.

The SECRETARY read the article as engrossed, as far as and including Section 3, which reads as follows:

SECTION 3. For the purpose of enabling the State to transact its business upon a cash basis, from its organization, the State may contract public debts; but such debts shall never in the aggregate, exclusive of interest, exceed the sum of three hundred thousand dollars, except for the purpose of defraying extraordinary expenses, as hereinafter mentioned; provided, that the further amount of indebtedness authorized by Article VIII, of this Constitution, shall be deemed legal and valid whenever said debt shall be incurred in accordance with the provisions therein expressed; and said debts shall be separate and independent of the State debt herein provided for. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein, and every such law shall provide for levying an annual tax sufficient to pay the interest semi-annually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the State, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect, except in cases of money borrowed to repel invasion, suppress insurrection, defend the State in time of war, or, if hostilities be threatened, provide for the public defense.

Mr. DeLONG. I move to amend this Section by striking out these words:

"*Provided*, That the further amount of indebtedness authorized by Article VIII, of this Constitution, shall be deemed legal and valid whenever said debt shall be incurred in accordance with the provisions therein expressed; and said debts shall be separate and independent of the State debt herein provided for."

That paragraph ought to come out, for the reason that we have knocked out the Pacific Railroad clause to which it refers.

Mr. GIBSON. I move that this article be laid upon the table until we have passed Article VIII. I do not think we can act understandingly upon it until then.

By general consent the article was laid on the table temporarily.

MUNICIPAL AND OTHER CORPORATIONS.

[The PRESIDENT in the Chair.]

The Convention took up, on its third reading, Article VIII, entitled Municipal and other Corporations.

The PRESIDENT. This article has been read, I believe, down to Section 9, upon its third reading.

Mr. HOVEY. There was a motion to recommit Section 9, for amendment, but Section 6 I think was passed over and not read.

The SECRETARY. The article was on its third reading, and the Secretary had finished reading Section 9, when the gentleman from Storey (Mr. Fitch) moved to recommit with instructions to strike out all after the word "provided," and insert other words. The motion was divided, and the proposition to strike out

prevailed, but the proposition to insert did not prevail. At that stage the Convention adjourned. That leaves the section to stand as follows:

SEC. 9. The State shall not donate or loan money or its credit, subscribe to or be interested in the stock of any company, association or corporation, except corporations formed for educational or charitable purposes.

BANKING SYSTEM.

Mr. BROSNAN. I intended to offer a substitute for Section 6, at the time when my colleague (Mr. Fitch) moved his amendment to Section 9. I then suggested my amendment, but the President stated that it could be amended as well afterwards.

Mr. DELONG. I think my colleague can reach what he desires by now making a motion to recommit the section with instructions to amend.

Mr. BROSNAN. I will move that Section 6, of Article VIII, be recommitted with instructions to strike out Section 6, and insert instead the following sections:

SECTION 6. Associations or corporations for banking purposes may be formed under general laws, and the Legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

SECTION 7. In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment over all other creditors of such banks or banking associations.

Mr. COLLINS. I would like to hear the gentleman's reasons for introducing that proposition.

Mr. DELONG. I will move as an amendment to the amendment of my colleague, that Article VIII be referred to the Committee of the Whole, with instructions to strike out Section 6.

Mr. BROSNAN. If my colleague offers that as an amendment I will accept it.

Mr. FOLSOM. Will the Secretary read the section proposed to be stricken out?

The Secretary read as follows:

SECTION 6. No bank notes or paper of any kind shall ever be permitted to circulate as money in this State, except the Federal currency and the notes of banks authorized under the laws of Congress.

Mr. COLLINS. Do I understand that the striking out of this section will give the Legislature unqualified power to set in motion, without any restriction whatever, a system of banking? If so, it may work well and it may not, but at all events it is rather an important move, and I hope this Convention will not adopt it without due consideration. Generally, I believe, when banking systems are permitted, in the organization of new States, they are limited somewhat; but here, by striking out that section, we leave the whole matter entirely open to the Legislature to institute such a system of banks as they please, without any restrictions. They might attempt this experiment under the most trying circumstances, and when money shall be abundant, and prices inflated indefinitely, it may prove to be dangerous if not disastrous. I do not know but it is all right, but still I would like to have it looked after a little. I should be better prepared to vote upon the proposition after hearing the views of other gentleman on the matter. I might be prepared for some such alteration as that originally proposed by my colleague, (Mr. Brosnan), but I think it would be preferable to let the section stand as it is, rather than strike it out altogether. Now in the Eastern States we know there has been a jealousy by the State against the national banks, and the national banking associations have encountered a great deal of difficulty in setting in motion that banking system which has been organized by Congress, and which I think is the most perfect system of banking that has ever yet been discovered—a system which pledges the entire faith of the nation for the redemption of the bills issued. But I do not, at this moment, feel prepared to strike out this provision in Article VIII, and without further reflection to give the Legislature the right to establish a system of State banks, which would be at war with the national banks, authorized by Congress, as our metallic currency to-day is warring against the national currency. I think it is a matter of too much moment to be passed by without serious reflection. This section proposed to be stricken out says:

No bank notes, or paper of any kind, shall ever be permitted to circulate as money in this State, except the Federal currency and the notes of banks authorized under the laws of Congress.

Now, the financial officers of the Federal Government have found themselves exceedingly embarrassed by the conflict, the strife, the emulation, and even the hostility which a large portion of the State banks have maintained and exercised against the organization of these Federal banks, authorized by the last Congress.

Mr. STURTEVANT. By permission of the Chair, and the gentleman from Storey, I would like to hear the amendment offered by the other gentleman from Storey, (Mr. Brosnan,) read again.

Mr. COLLINS. That was withdrawn, and the motion now is merely to strike out the section. I am not disposed to make a speech upon the question, and I believe I have urged all the objections which now occur to my mind; but I would like to hear the views of my colleague, (Mr. DeLong,) who suggested the striking out of the section.

Mr. DELONG, [in his seat.] Certainly; I will give my reasons when I have an opportunity.

Mr. CROSMAN. To a great extent, I must agree with the gentleman from Storey, (Mr. Collins,) that something should be said on this subject in our Constitution. I hold in my hand the Constitution of the State of Michigan, which contains two sections that would come in here, I think, very well. They embrace, I believe, the substance of the proposition originally

offered by the gentleman from Storey, (Mr. Crosman,) but the language is a little different. I will read them:

Sec. 4. The Legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require security to the full amount of notes and bills so registered, in State or United States stocks, bearing interest, which shall be deposited with the State Treasurer for the redemption of such bills or notes in specie.

Sec. 5. In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Mr. DeLONG. I will state that in the first place my object in moving to strike out the section was this: The whole clause is a prohibitory clause upon the Legislature and the people, forbidding them from hereafter exercising a privilege which they may find to be wise, and decidedly for the interest of the community. Why should we attempt in this matter to represent the people of the State in the future, or to take the subject out of the hands of those whom they will elect as their representatives? Why should we, at this stage in our country's history, say that for all time to come no bank notes shall ever circulate in this State as currency, except they be the currency of the United States, when it may so happen that all the Federal currency may become extinct by payment, as we certainly hope will be the case in the event of this Government sustaining itself in this war? In that event there will be no currency, except a metallic currency.

Now I am not going, in the remarks I make, to travel over the ground which I have once foreshadowed in this Convention. California has such a provision as this in her Constitution, with the slight exception, however, that California does not except the Federal currency, but prohibits the circulation of bank notes or paper of any kind. Every thing but gold and silver is excluded from circulating as money. The Constitution of that State absolutely forbids every other species of circulating medium. And what has been the consequence? Why, sir, California is dragged down—bound to the wheels of three-per-cent. She has not grown and flourished like any other State in the Union, but on the contrary she has been retrograding from the commencement of her history until the present time, and her course is still backward. Now I do not want to launch our ship of state upon the same waters, and place it under the control of the same influences which I know have blighted the prospects of California. I would like to see the people of this State have the power, if they desire it, to provide for establishing some other representative of value besides gold and silver. If they desire it, let them have it; if not, of course they will not have it.

That is my reason for moving to strike out this section. I insist that you cannot find in the civilized world, a State or a people, other than the State of California, and the people on this coast, who have prohibited paper money, or who, if deprived to-day of every other representative of value except gold and silver, would not at once find all their material interests greatly crippled and injured. Their commerce, their manufactures, and their business prospects of every character and description, would be immediately blighted. In the State of New York, for instance, if they had no other currency to-day than gold and silver, I do not believe the ordinary business affairs of men could be carried on, and I believe the rate of interest on money there would immediately become the same as in California, on account of the scarcity of the precious metals. It is that which makes interest high, and the high rate of interest is what compels us to do without those improvements which we so much need. That is what causes all manner of business among us to drag along with difficulty, and often to stop altogether. The mechanic goes without his job and the laborer without employment or without his hire, and every kind of improvement and development that does not promise to pay the the highest current rates of interest on the capital invested must be abandoned, or never entered into. We have seen this difficulty in California, and we see it here. I have labored zealously, in the Legislature of California, seeing that there was no other remedy, to secure the passage of a usury law, in order that the capital of the country might be employed in works of public utility, such as the building of canals, the draining of swamp lands, and the opening up of the hidden sources of wealth in that State; but I was laughed at and beaten down by the money influences of Sacramento and San Francisco, brought to bear in that Legislature. It was that Constitutional provision which followed the State like a curse. I ask gentlemen here to leave the Legislature of this State free, if the people shall hereafter desire it, and so express their desire, through their representatives, to establish a different financial system. Leave the people free to adopt some other representative of value besides gold and silver.

But I am somewhat favorably impressed with the proposition of my friend from Lyon, (Mr. Crosman,) that if we should say nothing at all about banks, and thereby permit the Legislature to establish them, if the people wish it, it is proper that they should be restricted in respect to the issuance of bills. If banks are established here, as I hope they will be, I think they should be restricted in that respect, and therefore I will move to amend so that the instructions to the Committee of the Whole will be to strike out Section 6 and substitute the two sections from the Constitution of Michigan, which the gentleman has read.

Mr. CROSMAN. I suggest that we put in there the words "in its discretion," so as to read: "The Legislature shall, in its discretion, provide by law," etc.

Mr. DeLONG. Very well; I will move that this Article be referred to the Committee of the Whole, with instructions to strike out Section 6, and substitute the following:

Section 6. The Legislature may, in its discretion, provide by law for the registry of all bills—

No; something must come in before that.

Mr. BROSNAN. I think the gentleman will find that those sections of mine just cover the ground.

Mr. DeLONG. Wait a moment. I find here a Constitutional provision which I like, not only making the securities deposited responsible that the notes shall be redeemed, but also making the stockholders individually liable, to the amount of their stock. I do not know but we should adopt something of that kind.

Mr. COLLINS. What are the securities?

Mr. BANKS. Will the gentleman read the provision?

Mr. DeLONG. There are several sections, which I will read:

Sec. 2. If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by an officer of the State, of all paper credit designed to be circulated as money, and ample collateral security, readily convertible into specie, or the redemption of the same in gold or silver, shall be required, which collateral security shall be under the control of the proper officer or officers of State.

Section 4 provides that the General Assembly may also charter a bank, with branches, etc. I do not know that we want that. Section 5 also refers to branches. Then comes a provision which I like:

Sec. 4. The stockholders in every bank or banking company shall be individually responsible to an amount over and above their stock, equal to their respective shares of stock, for all debts or liabilities of said bank or banking company.

Mr. HAWLEY. Those are substantially the provisions of the banking law of Louisiana, and I will say, that after a residence of several years in that State, and a subsequent acquaintance with the history of the State, I can assert without fear of contradiction, that such a thing as a failure, or loss by holding the bills of a bank of that State, was never known under those provisions; and until this rebellion broke out the notes of the Louisiana banks were sought for throughout the entire country, at par.

Mr. DeLONG. There is another provison here which I like first-rate:

Sec. 5. Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

That is a good provision, and there are some others here worthy of consideration. I wish that the Convention would go into Committee of the Whole on this article, without any instructions.

Mr. CROSMAN. I suggest that the motion to recommit be withdrawn, and let the article be referred to a special committee of five, without instructions.

Mr. BROSNAN. If the motion to recommit with instructions is withdrawn, I will move to refer the article to a committee without any special instructions, such committee to report to-morrow morning.

Mr. CROSMAN. I believe Section 9 does not give satisfaction, and it will take time to discuss it to-day. My idea is that we had better let the whole article be referred.

Mr. BROSNAN. I wish merely to state to the Convention that the two sections which I have presented here are copied from the Constitution of the State of New York. In that State there have not been, since the adoption of that Constitution, any bank failures, or if there have been the bill-holders have always been secured, because the banks are all required to deposit with the Controller or Treasurer of State an amount of State or United States bonds sufficient to cover all their debts or issue, of bills. I find that in almost all the States of the Union, these banking institutions are not only tolerated but fostered, and the framers of all the new State Constitutions have been compelled to throw around them safeguards for the protection of bill-holders and depositors. These safeguards, it seems to me, are abundant and beneficent. Now we have copied this clause in our Constitution from the Constitution of California, but at the time when the provision in the Constitution of that State was adopted, there was, as is well known, a great deal of panic in the Eastern States, growing out of failures of banking institutions. But since then those institutions have been remodeled, and there is no longer any occasion for such a panic. Besides, California is essentially different from us in so many respects that we ought not to copy from her, in my judgment, in this regard. They had in California at that time an abundance of money. In fact their currency was carried in every man's pocket. Every man had his gold dust and scale gold, and paid it out as he received it from his customers. Gold was so abundant that they thought they never would need to have banks.

The PRESIDENT. The Chair understands that the gentleman from Lyon (Mr. Crosman) suggests that the article be referred to a committee of five. Does he make that motion?

Mr. CROSMAN. I believe it is not in order unless the other motions are withdrawn.

Mr. DeLONG. There was one suggestion made by my colleague (Mr. Collins) which I did not reply to. It is stated here that the paper currency of the United States, and the notes issued under the authority of the Government, are amply sufficient, without the establishment of banks.

Mr. COLLINS. My colleague did not understand me; I did not state that.

Mr. DeLONG. Very well; it has been so stated by others, and perhaps that is the reason why I mistook my colleague. Now the simple and conclusive reply to that is this, that if the private banks cannot compete with the Federal currency, if there should remain a paper currency amply secured, under the authority of the Government, the people will prefer that currency, and consequently there will be no necessity for private banks, and they will all be

driven out, as they are in other States. We propose here only to give the power to the people to establish them if they should be required, and I think the time may come when they will be required. If the Government shall be successful in this war, and a time of peace shall follow, it will very soon and very rapidly obliterate the national debt now in existence, and I look forward to the time when there will be very little paper currency issued by the Federal Government. When that time comes, we propose to leave this power in the hands of the Legislature, in order to find a currency in place of the Federal currency, which will then be withdrawn—something to serve as a currency in place of gold and silver. Then, if we strike this section out, the people through their Legislature may establish such a banking system as they please. Now I ask, why not refer the article right now to the Committee of the Whole, without instructions, and then let us fix this section as we want it, report it back and pass it at once, while our attention is turned to the subject. I move to refer the article to the Committee of the Whole, without instructions.

The PRESIDENT. Is the motion made by the gentleman from Storey that the Convention now resolve itself into Committee of the Whole?

Mr. DeLONG. No, sir; the motion is, that Article VIII be referred to the Committee of the Whole without instructions—the whole article.

LIMITATION OF DEBATE.

Mr. EARL. Before going into Committee of the Whole I desire to offer a resolution, when I can obtain leave from the Convention.

The PRESIDENT. The resolution may be read for information.

The SECRETARY read as follows:

Resolved, That debate shall be restricted to ten minutes, the same restriction to be applied in Committee of the Whole.

Mr. EARL. I believe we can instruct the Committee of the Whole in respect to debate, as well as anything else.

The PRESIDENT. Is there any objection to considering the resolution now?

Mr. DeLONG. I beg leave to differ with the gentleman who offers the resolution. It is not in the power of the Convention to instruct the Committee of the Whole in respect to debate.

Some discussion followed on the question of order suggested.

The PRESIDENT. Does the gentleman object to the introduction of the resolution?

Mr. DeLONG. Only on that ground.

Several other gentlemen objected.

The PRESIDENT. The resolution cannot be considered without unanimous leave of the Convention.

BANKING SYSTEM—AGAIN.

Mr. TOZER made an explanation in regard to the engrossment of Article VIII. The annotations and interlineations in the article, he said, had been very numerous, but the Committee had carefully compared it, and made various corrections, and he believed it had been engrossed in exact accordance with the instructions of the Convention. The gentleman from Storey (Mr. DeLong) had made a remark, either in the way of pleasantry or otherwise, which he thought was a reflection upon the Engrossing Committee.

Mr. DeLONG said the remark he had made was entirely in the way of pleasantry, and certainly was not intended to reflect on the ability and intelligence, or on the fidelity of the Committee.

The PRESIDENT. Discussion of that matter is not in order. The question before the Convention is on the motion to refer the article to the Committee of the Whole without instructions.

Mr. PARKER. Is it in order to refer the article without instructions?

The PRESIDENT. It is, if no gentleman raises a point of order.

Mr. PARKER. I will raise the point of order that it is entirely out of order to refer the article without instructions.

The PRESIDENT. Gentlemen of the Convention will readily see that the point of order is well taken.

Mr. EARL. I move that the article be referred to a committee of seven.

Mr. DeLONG. If there is any objection I will withdraw my motion, but it might have been referred by general consent. My idea was that in Committee of the Whole we could agree upon the construction of the section, and do it all in a few minutes.

The PRESIDENT. Does the gentleman move a suspension of the rules, in order to refer the article without instructions?

Mr. DeLONG. I will make that motion.

Mr. McCLINTON. I am opposed to referring this Article to the Committee of the Whole, either with or without instructions—with instructions to strike out, or with any other instructions whatever. We have already decided upon this matter, and have adopted the Article as it stands, and it now comes up regularly on its third reading. I refer now to Section 6, of Article VIII, and I believe at the time of its adoption it was satisfactory to a very large majority of the Convention. Moreover, I believe that it will be in its present form entirely satisfactory to a large majority of the citizens of this State.

Gentlemen object to the section as engrossed upon the ground that it restricts the Legislature from authorizing the establishment of banks, in case the people desire it. Now I object to changing the provision from its present form for the very reason that I am satisfied the people want to see the power of the Legislature restricted on this matter. I believe if there is any one thing, one right, or one imaginary right—I will call it an imaginary right for the sake of the argument—if there is one imagi-

...ery right of which the people are more jealous ...ion of any other, it is this right to keep as near ...s they possibly can, within the bounds of the ...ws of Congress, to a metallic currency. Now ...do not want to see the powers of the Legisla...ure restricted in matters which I do not con...der of very great importance, but as this is a ...atter of the greatest importance to the inter...sts of the people of the State, I do want to see ...a prohibitory clause in this Constitution which ...ill prevent the Legislature from ever institut...ing a general wildcat system of banking in ...his new State. The sections read by the gen...tleman from Storey, (Mr. DeLong,) from the ...Constitution, I believe, of the State of Lou...isiana, are excellent. I believe they are among ...the very best provisions authorizing banking ...systems to be found in the Constitution of any ...State in the United States. Yet, for all that, I ...do not believe, under the existing circum...stances, that it is the best thing we can do to ...authorize any system of banking, or the circu...lation of any representative of money except ...the currency of the United States, and of banks ...authorized by the laws of Congress. We have ...already done that in Section 6, as it has been ...amended, and I hope we shall adhere to that ...provision as we have already agreed upon it.

Some of the gentlemen who have advocated the change now proposed to be made, have had an eye throughout the sitting of the Convention to the future adoption of this Constitution by the people. They seem to regard, as a matter of the greatest importance, the securing of the adoption of this instrument, and they want to direct their action as much as possible to that end. Now, Mr. President, I do not doubt that the authorizing of the establishment of banks in this State by a provision incorporated in this instrument, would be the greatest death-blow to this Constitution which we could inflict, for the reason that while I am satisfied the people of this Territory are willing to accept the National currency, and that of the banks authorized by Congress, and will have no objection to accepting as representatives of money the bills of banks so authorized by the laws of Congress, yet I am equally well satisfied that they will indignantly frown upon any Constitution which would authorize the Legislature of this State to inaugurate a general system of private banking. I want to sustain the National currency, and for that one reason, almost as much as anything else, I do not want to authorize a system of banking here that would come into conflict with that National currency, and drive it out of circulation.

These are my opinions in brief, and I am willing that this matter should come to a vote immediately. I would rather that the rules should be suspended in order that we may vote on it immediately, because I do not believe the Convention desires to change its action from that which it has already adopted. I hope, therefore, that the rules will be suspended, and that we will at once come to a vote.

Mr. COLLINS. Gentlemen may think it strange that one who has always been an earnest advocate for banks under proper restrictions, should have called upon the Convention to consider well before taking action upon this matter. I am opposed to the establishment of a banking system, under the laws of this proposed State, because I think that there is at present, or will be in a very short time in the future, no demand for such a banking system. At the time when Congress established this National banking system I paid considerable attention to it, with a view to ascertaining what was likely to be its operation in this Territory, in California, and on the Pacific Coast generally. And gentlemen must bear in mind that this same section has been already amended by the Convention so as to read as follows:

SECTION 6. No bank notes, or paper of any kind, shall ever be permitted to circulate as money in this State, except the Federal currency and the notes of banks authorized under the laws of Congress.

Now this section, as thus amended, contemplates two things: First, that the Federal currency which is now in circulation to the amount of over four hundred millions of dollars, in the United States, shall not be restricted in its circulation in our State; and second, that the operation of the National banking law of Congress shall not be impeded. Congress has passed a law which contemplates the absorbing of this Federal currency into what are called "Five-Twenty Bonds," which at the Treasury Department in Washington can be hypothecated, and placed on deposit, and the Treasurer, or Auditor, will issue to the depositor as many treasury notes, less ten per cent., as he has bonds deposited. For instance: if I wished, in coöperation with some of my fellow citizens, to establish a bank at Carson City, with a capital of five hundred thousand dollars, I would procure legal tender notes to that amount, exchange them for five-twenty bonds, and deposit those bonds with the authorities in Washington, receiving therefor notes for State circulation for the amount deposited, less ten per cent.

Now I have remarked, that Congress, or the Executive authorities of this Government, rather, have encountered great opposition to this scheme, on the part of banks organized or formed under the authority of the States of the Federal Union. That has been particularly the case in Boston, Philadelphia, and New York. They have opposed it because they felt that this system of banking would eventually force them out entirely. They felt that there was something dangerous to themselves in this universal banking system, under which the whole property of the Nation is pledged for the redemption of the bills, and under which there is comparatively little or no discount between here and Boston, or between one end of the Union and the other,—that it would come to be appreciated and approbated, and consequently, speedily availed of and possessed, by the people of the entire country. Hence there has

been this strong hostility on the part of those banking institutions. Now, for one, I am opposed to the organization of State banks here which may in their operation interpose their influences against the National banks, or the banks authorized under the National laws.

My colleague (Mr. DeLong) says he supposes that in a few years all these National bank bills will be absorbed, and then perchance we may have no banking institutions. That is the very object of the General Government—to induce the absorption of these notes now in circulation into bonds, and to establish this system of National banks. The consequence has been that already agents are buying up the bills with the view of organizing such banks in the Atlantic States, and perhaps on the Pacific coast also. I have heard it stated by parties who are competent to judge, and my own opinion confirms that judgment, that there never was a system of banking so complete and perfect in all its minutia, and especially in regard to protecting the bill-holders, as this system established by Congress. If such be the case, I ask what is the necessity of establishing a system of State banks? There is no analogy between us and California in that regard. I was in favor of a banking system in California in 1849, and all through the vicissitudes of after years, but now California does not need it, because Congress has established a more perfect system than the State could establish—a system that pledges not only the State, but every State, for the redemption of its issues.

My friend and colleague (Mr. Broman) has spoken of the New York banks as constituting a very strong and perfect system; but the strength of that system is not equal to that of these National banks, because only the property of New York is pledged for the redemption of their bills, while under this system the property of the nation is pledged, in so far as these bonds go. There has been a conspiracy entered into on this coast against the Federal currency, and we know how a few capitalists, and bankers, and money shavers in San Francisco, have by the power and influence of their money suborned the entire people of the Pacific coast—all the merchants and all the bankers of the country, in California, in Nevada, and in Oregon—against that currency that should have given us money in abundance, while at the same time the premium on gold has been so great that it is passing from us, and very soon we shall have no money with which to transact our business and commerce. I hope we shall not decide to suspend the rules and further investigate this matter. I do think that Section 6 of Article VIII is ample and abundant to answer all the legitimate purposes of this State.

There is only one objection to the system established by Congress, and that I think the next Congress will remove. It is this, that the law contemplates seven per cent. interest only. Now I think Congress would be willing to allow the banks in each State to adapt themselves to the usury laws of the State in which they are organized. That would give a rate of interest of six or seven per cent. in the Eastern States, ten per cent. in California, and whatever rate may be established by our laws in this State. For these reasons I do not see any necessity at all for an amendment of this section.

I am opposed to it also because it will operate, so far as it can operate at all, to prevent the National Government from resuming specie payments. It was distinctly understood that the National law must almost immediately convert all the bills now in circulation into these Five-twenty Bonds, and that, they being absorbed at an early date, the Government will at an early day resume specie payments. The Government wishes to resume specie payments as soon as possible, and asks our cooperation in this matter, in order that that end may be accomplished.

Mr. DeLONG. Will my colleague allow me to make a suggestion? It is with a view to this contingency that I offer this amendment: Suppose that Congress, to use a homely phrase, concludes to go out of business upon the war ceasing. Suppose then it should not desire any longer to maintain a banking system as a national matter, but should withdraw or surrender these deposits. Then in that event, there being no paper currency issued by the Federal Government, would we not be left to fall back upon a metallic currency, with a prohibitory clause against any other kind, and against State banks?

Mr. COLLINS. I know it is said that if the skies should fall men might catch larks, but this contingency to which the gentleman refers is so remote that I do not deem it advisable for us to give the Legislature permission, at least without very great restrictions and prohibitions, to enter into any wildcat system of banking. We had an example here, last summer, of the state of excitement, and rashness of adventure, that may prevail when a community is in the enjoyment of great prosperity. We have suffered injuries from that cause from which it may require a decade to enable us to recover. Every one knows the rapidity with which in times of such excitement prices can be swelled up and inflated, and madness seize upon the body of a people. I have seen many communities that have gone through similar scenes, and I know the losses and the sufferings that are thereby brought upon a community. And although I am a bank man, and always have been up to the present time, yet I am not willing that this Convention should place its veto upon that great banking system on which our Federal Government has entered, and in the conduct of which it has enlisted such an amount of wisdom, of sagacity, and of liberality, in order to introduce a system of State banks, which may war against the Federal currency—against that currency which we are bound, by every consideration of patriotism, in the present condition of our country, and the condition it may be in, for another decade, perhaps, to sustain, or to give all the

sideration that the country requires of us to aid in sustaining.

Mr. DeLONG. Will my colleague permit me to ask him another question? It is, I believe, a fact admitted, that since the establishment of paper currency by the Federal Government, notwithstanding the liberal and free systems of banking adopted in most of the States, the Federal currency has driven nearly every State bank in the North out of existence. Now if we have this Federal banking system continued, and we fear that that any private banking system will vie with it?

Mr. COLLINS. What does my colleague mean by private banking system?

Mr. DeLONG. I mean associations for banking alone.

Mr. COLLINS. The gentleman refers to private banks—does he mean different from public banks?

Mr. DeLONG. No, sir. I mean as contradistinguished from the national banks. They are called private banks, because they are not based upon the national capital. I do not think we need fear that we shall have any other banks than those organized by the Federal Government, as long as the Federal Government shall continue the banking system; and if it should discontinue that system, I think we can trust the people and their Legislature in that particular. It is only with the view of the possible discontinuance of that system that I advocate this amendment.

Mr. COLLINS. Gentlemen will bear this in mind: If they examine the law of Congress, creating this banking system, they will find that it makes provision that every State having so much population shall have the privilege of investing such an amount in these bonds, for the purpose of establishing banks in that State under the Federal law, so that there can be no excess of such banks, in one State over another. If this State comes into the Union she will be entitled to a certain amount of these bonds, and if that provision is altered, as I have suggested, so as to conform to the usury laws of the several States, then, within a few months, I am confident there will be millions of dollars of capital brought here and invested, and it will be used in financial operations in such a manner as to awaken and stimulate business to such an extent as we have never yet dreamed of. I therefore do not want to see any State banks organized, because just the moment they are organized, and succeed in securing the confidence of the people, they will go to that extent deter capitalists from entering into this national banking system, which has inspired the confidence of the entire people. I do hope, therefore, that my friend, who is so earnest and zealous, and who is almost always right, will withdraw his motion, and let this whole thing die out. We have already a sufficiently good and strong banking scheme, and I want nothing better, except it be the change I have referred to, in regard to the rate of interest.

Mr. DUNNE. I shall not expect to be able to throw light upon this subject, after the very able discussion to which we have listened, but I can give the reasons why I am opposed to the proposition now before the Convention. I do not wish to see too many great and important questions put into the Constitution, for the people to be excited about by the politicians in the canvass before us, and I think that the question of a change of our currency is certainly almost as great in importance as the proposed change of our condition from a Territorial to a State government. I think that while it may be a mooted question whether the people of this Territory, either a majority or all of them, are willing or anxious to have the legal tender notes of the Government adopted as the currency of the country, there is no doubt about the proposition that they are not ready at this moment to determine whether or not they will at once jump into a general banking system. I do not think that is a question that should be put before the people now, at the same time that they are called upon to decide upon other, totally different, and perhaps graver matters. Those gentlemen, however, who have favored this motion thus far, seem to have done so on the ground that they wish to have a clause in the Constitution, under which, at some future day, after the legal tender notes shall have become established, and in view of their possibly becoming finally extinguished by the Government, after a long term of years, the State Legislature may have something to fall back upon; so that after the State shall have been deprived of the legal tender notes as a circulating medium, in consequence of their withdrawal by the Government, they may have a means of establishing such a medium of their own. Now I think that matter can better be provided for under the head of the provision for amending the Constitution.

Mr. DeLONG. All right; I have no objection to that.

Mr. DUNNE. Now in regard to the point which has been raised, to the effect that the next Congress, or some future Congress, may repeal the law, or take such action as may deprive us of the legal tender notes, I suppose it will be seen that if this banking law is repealed the great absorbtion of the legal tender notes contemplated will not take place, so that we shall have either the one or the other. We shall have either the legal tender notes, if the banking system is repealed, or if the banking system is continued we shall have the bank notes. If the legal tender notes are absorbed in the purchase of bonds we shall have the benefit of the general banking system, and if not we shall have the original notes. In either case it must be some time yet before they can be generally adopted and come into circulation, and it must also be some time before they can be all called in and extinguished, because there is an immense amount already in the market. If we have occasion, however, in the future, for the establishment of State banks, all we have to do

is to pass an amendment to the Constitution, by two successive legislatures, and submit it to the people for their adoption. For one I am opposed to adopting such a provision now.

Mr. DeLONG. Yielding to the opinions of other gentlemen, I will withdraw my motion. The section was amended when it was before the Convention formerly, so as to make it somewhat different from the original section, and I was not aware of the nature of the amendment.

Mr. TOZER. I object to the withdrawal of the amendment, because I would like to have it prevail.

The PRESIDENT. The motion to suspend the rules has been withdrawn.

Mr. DeLONG. I also withdraw the further motion to recommit.

The PRESIDENT. There is no further question then before the Convention, in regard to Section 6.

PACIFIC RAILROAD.

Mr. DeLONG. I suppose the only question now remaining unfinished in regard to the article, is that in relation to Section 9, as printed. We have stricken out, or recommended the striking out, of the proviso authorizing the Legislature to grant three millions of dollars for a railroad, and if it is in order, I now move that the Convention adopt the report of the committee, striking out all of that proviso.

Mr. HAWLEY. A member who is now absent has spoken to me in relation to the feasibility of incorporating in that section a provision similar in its character to the provision adopted by the former Convention, but applying to a company which shall build a road between the mining sections of the State and the Sierra Nevadas, connecting the mines with the wood and water of the mountains. I do not propose to offer any amendment myself, but I merely submit the suggestion, in order that if any member feels so disposed he may put it before the Convention in some shape. I do not feel disposed myself to make any motion in regard to it, because, although I should be willing to do something of the kind, yet I see many difficulties in the way. The completion of such a road, for instance, would involve the necessity of the outlay of an immense amount of money, in the freighting of iron and other railroad materials, and that would entail a much larger amount of debt upon the State than I should feel disposed to vote for.

Mr. DeLONG. I think the project is chimerical.

Mr. MASON. I trust that all that portion of Section 9, of Article VIII, which is contained in the proviso, will be stricken out.

Mr. DeLONG. It has been stricken out already.

Mr. MASON. I certainly want to see it stricken out, but I wish it distinctly understood at the same time, that there is no man more ardently in favor of the Pacific Railroad than I am. But I am not in favor of establishing, or of contributing my support to the sustaining of a monopoly. Now I understand that there are two roads in a state of rivalry endeavoring to cross the mountains.

The PRESIDENT. The Chair understands that Section 9, of Article VIII, as printed, has been adopted. Will the Secretary state the precise condition of the question.

The SECRETARY. The section, as it now stands, reads as follows:

SECTION 9. The State shall not donate or loan money, or its credit, subscribe to, or be interested in any work of any company, association or corporation, except corporations formed for municipal, educational, literary, scientific, religious, or charitable purposes.

The balance of the section has been stricken out.

Mr. MASON. Then I hope the section will be adopted as it stands.

The PRESIDENT. If no amendments are offered, the reading of the article will be proceeded with.

The SECRETARY proceeded to read the rest of the article, and the question was stated on its final passage.

Mr. CROSMAN. With regard to Section 1 of this article, so far as I am concerned, I am not satisfied with it. Circumstances now unforeseen may occur under which we may want to aid the Central Pacific Railroad Company.

Mr. DeLONG. Then we can amend the Constitution.

Mr. CROSMAN. In answer to that, I will say it is well known that, according to the present programme, we are to have a provision for biennial sessions of the Legislature, and in that case it would take from two to three years to amend the Constitution. The Railroad Company has represented to us, on this floor, through its able President, that the finances of the Company are in a very good condition, and it seems as though they would be abundantly able to push the road forward, certainly as fast as they can obtain the material to do so. But it is well known also, to every member of this Convention, that the Company will have a great deal to overcome in passing the summit. The immense expense of the undertaking will be there. Now, as matters may turn out, their finances may not be as good as they have been represented to us here. They may possibly push the road forward to a distance of thirty, or sixty, or eighty miles, and then be obliged to suspend, and the construction of the road be delayed, so that we should be deprived of the benefits which we hope to derive from the Pacific Railroad for perhaps two, three, or four years longer, in order to get through an amendment to the Constitution, under which we shall not be absolutely prohibited from aiding the road in any way, by legislative action, when at the same time the great mass of the people might feel a strong desire to give them aid. And at the same time, too, the people might be abundantly able to aid the railroad without injuring themselves materially, and I think we have reason to believe that by that time we will be in a condition to grant aid to the extent of a few millions or

dollars, without any serious injury to ourselves financially. For such reasons I have desired to see a proviso incorporated in that section, which I have rather hastily drawn, and which I will send up and have read.

Now this other matter, in relation to banks, has been passed in a manner which is not altogether satisfactory to me. It has been passed in that way for the purpose of harmonizing and saving time, but I certainly think, for myself, that we ought not to be too hasty in regard to these matters. We ought not to allow an instrument like this to pass from our hands in an unsatisfactory condition. But in this case, what I want to get at is to retain that right which we now hold, or which is inherent, the right to lend our aid to an enterprise which is to be of such great benefit to us. I do not want to tie up the hands of the Legislature upon such a subject, so as to prevent it from ever granting aid, but I am in favor of retaining the right, and empowering the Legislature to grant it, so that if the Legislature two, four, or five years hence, shall feel disposed to pass a law for that purpose, and the people are disposed to sanction it, that can be done, and aid can be granted to this enterprise. That is the right of the people, and I believe that circumstances may occur under which it would be advisable. I think gentlemen will all agree with me that it is of importance to us to push the road forward as rapidly as possible. What I wish to propose is this, and I ask that it be read by the Secretary.

The SECRETARY read as follows:

Provided, That the State may issue bonds to an amount not exceeding three millions of dollars, on such terms as the Legislature may prescribe, to the Central Pacific Railroad Company, after it shall have completed, and have in good running order, eighty miles of its road from Sacramento towards our State, at the rate of fifty thousand dollars per mile as it progresses towards our State; but no such law shall be in force until sanctioned by the people.

Mr. CROSMAN. That is the amendment I propose, and it seems to me that in adopting our fundamental law, we ought not altogether to tie up the hands of the Legislature in this important matter.

Mr. PARKER. I second the amendment.

Mr. GIBSON. Why does the gentleman specify the Central Pacific Railroad, instead of any other road? Why not leave it open to other roads, since there are two roads? Why should we give our preference to that road?

Mr. HAWLEY. I think it is best to have a saving clause there, and I suggest where it says "on such terms as the Legislature may prescribe," that we limit the interest to seven per cent.

Mr. CROSMAN. I will accept that amendment. I do not know as I can throw any further light upon this subject, or upon the subject of the inquiry suggested by the gentleman from Ormsby, (Mr. Gibson.) I believe that this is the only road, or at least that this is the only company occupying a position where it is likely to give us any immediate help in the way of a railroad across the mountains. This company has the government aid, and State aid from California, and it is already progressing with some considerable degree of rapidity, and it is the only road that has been laid out up to the State line.

Now one word further as to the distance specified here, of eighty miles. It is said that the distance from Sacramento to the summit is one hundred and four miles, but when they shall have come eighty miles from Sacramento they will have reached a point where immense expenditures will be required. I should like to see this matter placed in such a position that in case the finances of the company should become so much embarrassed that they will not be able to push the road forward, then, if the people of this State wish to do so, they may lend the credit of the State to aid that work.

Mr. MASON. With all due deference and respect to the opinions of members of the Convention, I entertain views with regard to this Pacific Railroad which I would like briefly to present. I would have discussed the subject when it was up before, but the question having been sprung a little differently from what I had anticipated, I was precluded.

Now, sir, I said before, and I say again, that I am decidedly in favor of the Pacific Railroad. But I am not in favor of being generous without first being just. I am satisfied that no contribution from the State of Nevada could be given which would facilitate the building of this road, and even if it could, I, for one, would be opposed to it. I have but very little faith in, and I have but very little love for, these monopolies. I have witnessed them for the last thirteen years in the State of California, and I have witnessed particularly the love and admiration of the people which is cherished by that vast monopoly called the California Steam Navigation Company. I know something, also, of the love, the approbation and the admiration which the people have for that monopoly. I have seen that when a man of indomitable energy and enterprise has started an opposition, this monopoly has manifested its love for the people by reducing its rates of fare down to a mere nominal sum, and I have seen that when, by the exercise of their power, and the concentration of their wealth, these same enterprising parties have been run off, within twelve hours the fare has been raised by that monopoly from half a dollar to five dollars, for the trip from Sacramento to San Francisco.

Sir, a monopoly, enjoying the exclusive right to run a railroad to this State, might reduce the fare somewhat. They might reduce the price of potatoes five cents on the hundred pounds, perhaps, and it would be a benefit to the miners, and to the community generally, to that extent, I admit. I know it would be a benefit. But their love for the dear people I am satisfied would not be such as to induce them to reduce their prices below a paying point. They would keep them up as high as they could. That is

the reason I am opposed to the imposing of a heavy mortgage on the people of this new State—a mortgage of all they have and all they ever expect to have—to this railroad company, and their heirs, as has been done in California. I am opposed to that. While I would be willing to mortgage the dear people of the State of Nevada to a third railroad line—for I am willing to contribute to the third railroad that shall connect the State of Nevada with the navigable waters of California—I am not willing to mortgage them to the first. As to the first railroad, I say, God deliver me from a monopoly of that character.

And while I oppose this aid upon principle, I say also that we cannot afford it. If we can afford to sustain a State Government, it will be enough—and I think we can afford that. With all respect to the morality, virtue, and piety of the members of this Convention, I say I do not believe there is one member among them who does not pay more for his vices and his luxuries than he does for his taxes. For one, I know I pay ten times as much, and I presume the most pious of us pay more. But, sir, I look upon the establishment of this government as a national call. The Government of the United States says to us—"We want you in our Union; we need your assistance; we want your Senators and your representatives in Congress; we want them for the purpose of enabling us to keep pace with the age; we want them to help amend the Constitution of the United States; we want you to form a State Government, and we ask it."

I desire to respond to that call. Sir, there is in man an eternal principle of progress, which no power on earth can resist. Every custom, every law, every science, and every religion must fall before it, like Dagon of old before the ark of the living God. And that principle of progress is to-day living, and with unwonted vigor and unrelaxing strength is to-day battling all over the world against the ideas of nobility and privilege. It lives to-day, and it will live forever. It is impossible, sir, to withstand that benign influence. It must and will go forth like a bright angel of God, to unbar the prison doors, to succor the needy, to relieve the distressed, and to pour a flood of life and light into the darkened intellects and dreary hearts of the downtrodden sons of men. That principle is opposed, sir—utterly opposed—to the principle of monopoly. It is in favor of granting equal privileges and favors to all. I want it distinctly understood, Mr. President, that I am an old Democrat—one of the old Jackson school—and I remember the language used by that distinguished statesman on this subject of monopolies. I remember that celebrated protest of Gen. Jackson's, in which, in substance, he says it is not in a splendid government, supported by powerful monopolies, that the people are to find protection for their liberties, and safety and happiness, but rather in a plain system, void of monopolies, granting equal favors to all, and special privileges to none; dispensing its blessings like the dews of heaven, which fall unseen, unfelt, and unnoticed, save from the richness of the verdure which they produce. That is the true doctrine, sir. I want no special privileges, and more especially, no monopolies, and therefore I oppose a monopoly of this character, that would inevitably crush those vital interests which I am here, for one, especially to represent. I hope, sir, that this clause of section 9 of Article VIII will remain just exactly as it is now in this Constitution. It suits me as it is. In the immortal language of Punch—"It suits Crooks."

Mr. WARWICK. I am glad to learn that it does "suit Crooks;" but I confess that it is very far from suiting me. I was astonished to hear the gentleman from Esmeralda, (Mr. Mason) after his eloquent, beautiful, and thrilling peroration about progress, fall back upon his old stage-coach, his old high prices, and all that, resting satisfied, sir, with things as they are. I was astonished, I say, to see this gentleman, who is one of the most ardent advocates of progress, resting so superlatively satisfied with things as they are, when he knows that he and every one of his constituents are suffering to-day for that great artery of communication which we, or some of us here, at least, desire to assist in opening. I am now, sir, and have always been a friend to the Pacific Railroad, in the Legislature of California, here on the floor of this Convention, and everywhere else. I believe that those who knew me then, and who know me now, will say that I have let no opportunity pass unimproved of rendering every assistance in my power to that great enterprise, or of advocating it so far as my poor ability would permit. And now, almost feeling that in consequence of the superior eloquence with which opposite action is here supported I stand no chance of success, I nevertheless still feel it my duty, before the final passage of this article, to make at least one more effort to have some provision made under which we can hope to sustain, and to assist if need be, this important undertaking. I trust, therefore, that the article will be amended, or referred to a committee for that purpose, and if the pending amendment is not satisfactory, I have another amendment which I hope may be inserted in its place.

Sir, the gentleman from Ormsby (Mr. Gibson) has inquired why, by name, the Central Pacific Railroad Company has been designated in this amendment. I will tell him. It is because the General Government, in its wisdom, after examining every plan, every survey, which has been presented, has decided that that is the most feasable route, and the one most likely to be finished. It is because there is no other road in existence, or likely to be, and no company formed for the purpose of building any other road connecting our Territory or State with the navigable waters of California. For that reason we desire to hold out our hands to this company, which has shown, by every

evidence in its power to present, that it really desires and intends to complete this great national work.

Now these gentlemen who are so adverse to monopolies, it seems to me, had they reflected for a moment, would have perceived that under our present system, sir, we are living under one of the most grievous monopolies that a people could possibly labor under. Is not the present system of tolls on all the roads across the mountains, which swell up the cost of passage and freights, a most grievous and burdensome monopoly? Though five years have elapsed since our Territory began to be developed, has there been any combination yet formed by which to reduce the prices of freight and passage between here and the State of California? How do we stand to-day? Before the Territory of Nevada was organized, while we were still a part of Utah, we could communicate with California at a rate of fare of fifteen dollars. That appears to have been the regularly established price; then our mines were discovered and population flowed in, and we became a distinct and separate territory. The amount of intercourse between us and California increased to an unparalleled extent, but instead of lessening the cost of communication it has risen from fifteen to twenty-five, twenty-eight, and thirty dollars, and there it remains, unalterably fixed. Though we have thousands of tons of freight constantly crossing the mountains, and are expending thousands of dollars daily of our own capital for its transportation, yet we have never been able to reduce the price, or to diminish in any degree the cost of communication between here and California. There are rival routes, with coaches filled with passengers. Five lines of stages a day have been put on. But what is the result of all this rivalry? Has it been to reduce the fare? No, sir. They have put on lines of opposition which are opposed in everything else, but on the question of fare they are always sound, as if it were a thing agreed upon by common consent. We have never been able to reduce the cost of transportation one single dollar. Does not the gentleman from Esmeralda, (Mr. Mason,) groan under a monopoly like that? It is a grievance, sir, which reaches us at the other side of this Territory, for it almost cuts us off from the outer world. Although we have no rugged mountains to cross, yet we have to pay almost twice as much to reach this portion of our Territory, as the passage from here to California. Does the gentleman know that? Does he know that for one hundred and eighty miles, the distance from Sacramento to Virginia, the price by stage is twenty-eight dollars, while for one hundred and eighty miles, the same distance from Virginia to Austin, the fare is fifty dollars? Does he know that this grievous monopoly is crushing us to the earth? The high prices of freight, and the difficulty of communicating with us by lines which are bringing thousands and thousands of men into our midst, to people our hills and valleys, and to develop the wealth which there lies hidden in abundance, constitute the grievous monopoly under which we are suffering.

I look upon this Pacific Railroad enterprise, not as a monopoly, but rather as a needed improvement, and one which is demanded by the whole country. It is one which the United States Government, even in this hour of national peril, has shown, by munificent donations, its desire to encourage. And why? That the people of Nevada may be assisted and enabled to grow in wealth and greatness. And yet now, while the opportunity is afforded, these gentlemen are not willing even to give the people of Nevada the poor privilege of saying whether they want to grant their assistance or not. We ask for nothing that the people cannot grant; we do not ask for legislation to the amount of a dollar. We only ask that the poor but noble privilege shall be granted, that the people, if they find it necessary for their well-being, shall be allowed to say—"We will lend our aid to this enterprise, because it is necessary, absolutely necessary, for our existence." Can it be, after the struggles we have passed through, with all the necessities of the case pressing upon every side, which are so apparent in this community, that a Convention met for the purpose of framing a Constitution for the State of Nevada, shall say to the people, during the progress of this, the greatest national work of this or any age—"We have closed the door against you, and barred it in your faces. You may speak in your Legislature upon any other subject, but you shall not speak upon this, which most concerns your vital interests. We deny you the privilege forever and forever." Why, sir, it seems to me but little short of an outrage to say to this people that they shall not speak upon this question. While we pass anything we please by a bare majority of a poor little body of thirty-two or thirty-three members, yet we are to say to the people that if they, even by an overwhelming majority, seek to take action upon this question, they shall be compelled to wait three or four years before they can effect their purpose.

Now, Mr. President, as it seems to me that the proposition of the gentleman from Lyon (Mr. Crosman) needs some amendment, I hope he will permit me to offer the following as a substitute:

Provided, That the State of Nevada may loan its credit to the Central Pacific Railroad to an amount not exceeding three millions of dollars, when it shall have completed its road to a distance of eighty miles east from the navigable waters of the Sacramento River; but no appropriation of any character shall be made unless sanctioned by a vote of the people.

The PRESIDENT. The gentleman's amendment will be entertained as an amendment to the instructions.

Mr. WARWICK. Very well; I respectfully submit that as an amendment to the instructions.

Mr. TOZER. I rise merely for the purpose of

stating my views on this subject. I am in favor of this motion. I hope this section will be recommitted with these instructions, and when the report of the committee shall come before this Convention I hope the Convention will finally incorporate it into our Constitution. It is scarcely necessary for me to explain why these are my views. My sentiment and opinion upon this subject have been fully expressed by the speakers who have preceded me, and who have advocated the views I entertain on this question. All agree, the opponents as well as the advocates of this measure, that a railroad running from California into our midst, or across our Territory, would be a great public benefit. There is no member of this Convention so bold as to deny that proposition. Now it may be, as my friend from Esmeralda (Mr. Mason) fears, a monopoly.

Mr. STURTEVANT [interrupting.] I rise to a question of order. This is the same question which has once been before us, and which was stricken out altogether by the Convention, and I believe our rules are, that when a subject matter has once been decided by the Convention it cannot be brought up again.

The PRESIDENT. The Chair understands the point of order to be that the amendment is the same as one which has previously been disposed of.

Mr. STURTEVANT. That is it.

The PRESIDENT. The Chair has made an examination, and thinks there is a material difference between the two amendments. The point of order is therefore not well taken.

Mr. TOZER. Another great reason why I am in favor of this motion, and shall vote for this reference, is the reason expressed by the eloquent and learned gentleman from Esmeralda.

Mr. STURTEVANT [interrupting.] Will the Chair be kind enough to inform us as to our future action, so that we can act understandingly. I do not wish to appeal from the decision of the Chair, but I wish to have the previous instructions read which have been referred to.

The SECRETARY read the amendment which was offered by Mr. Fitch on a previous day, and rejected, as follows:

Provided, That the State may provide for the payment of the interest upon the bonds of the Central Pacific Railroad Company, to an amount not exceeding three millions of dollars, for a length of time not exceeding twenty years, and at a rate of interest not exceeding seven per cent., for the completion of the Central Pacific Railroad across the Sierra Nevada Mountains; but no law for the payment of interest as aforesaid shall be effective unless sanctioned by the vote of the people, nor until said road shall have been completed and in running order for a distance of sixty miles eastward from the Sacramento River.

Mr. STURTEVANT. The President will please take notice that at a previous time, several days ago, when this same section was under consideration by the Convention, a question of this same kind coming up, in regard to a road crossing the mountains, this whole matter was stricken out by the Convention. Therefore, I contend, and I suppose I need not go behind that, that this amendment is in reality the same subject matter which has already been acted upon. Although it is different in words, yet it amounts to the same thing.

The PRESIDENT. The Chair does not recollect any proposition which was equivalent to this.

Mr. STURTEVANT. I allude to the printed section.

Mr. WARWICK. The action to which the gentleman refers was taken in Committee of the Whole, and as we are now in Convention I presume it is competent to renew the same proposition, even if it be the same. The status of the article is now altogether different. The Committee of the Whole can no more bind the Convention, by its action, than any other committee can, and consequently it would be competent to offer an amendment in the Convention, although it might have been previously rejected in Committee of the Whole.

The PRESIDENT. The Chair decides that the point of order is not well taken, and will state his reasons.

Mr. STURTEVANT. Oh, it makes no difference about the reasons.

The PRESIDENT. The proposition in the printed copy is not the same as the one now before the Convention, in this, as well as in other particulars, that in the printed copy there is no such limitation as to distance as is contained in this amendment.

Mr. TOZER. I believe I have the floor. I seem to be so peculiarly unfortunate that, although since the first day of our session I have only risen to express my views in the very briefest manner, yet I can never be allowed to say even a few words without some interruption. I have been perfectly content to sit at the feet of the Gamaliel from Washoe and learn wisdom, without even attempting to interrupt him.

The gentleman from Esmeralda (Mr. Mason) has expressed a fear that the railroad might become a monopoly, and thereby injure our interests. I admit that it might be to some extent a monopoly, as the first railroad across the mountains must inevitably be, yet I cannot conceive how even then it can become injurious to us. I believe that a railroad across the mountains even though it were a monopoly, would still be a great benefit to us. The monopoly to which the gentleman refers on the Sacramento River—the Steam Navigation Company,—although undoubtedly a monopoly, is still a most decided advantage to the people who have to travel up and down that river. So it will be of a railroad between here and California. Though it should become as great and complete a monopoly as the California Steam Navigation Company, yet it would be a monopoly which would save us millions of dollars every year. Therefore, I shall vote in favor of these instructions and for the aid proposed in this section to be given to the Central Pacific Railroad Company, notwithstanding that I fear, as the gentleman from

favorable feature, that it may become a necessity.

The gentleman from Humboldt (Mr. Dunne) said to the Convention that he should oppose another amendment because he did not want to see so important a matter submitted to the votes of the people. Now it is for that very reason that I have voted for and continuously favored amendments of this nature, proposed by myself and others. I am in favor of such propositions because they do provide for leaving the question to the vote of the people. I, for one, am willing to trust these questions entirely to the people, and I believe they are fully capable of deciding them. I have the most unfaltering faith in the honesty and the capacity of the people, to well and truly, faithfully and honestly, decide all questions of great importance, in accordance with their own best interests, and I trust that I shall never lose that faith in the people. And as this amendment proposes to refer this whole subject matter to the people, I am in favor of it, believing that nothing but the greatest good of the greatest number of the people of this State can possibly result from pursuing that course.

Mr. DUNNE. Will the gentleman from Storey allow me to make a little explanation, at this moment? I wish to explain a misapprehension on the part of that gentleman, in regard to the reason why I voted against the amendment offered a few moments ago. It was not that I was opposed to leaving questions of grave importance to be determined by the vote of the people—not at all. The gentleman labors under a great misapprehension in that respect. It was because I did not wish to see questions of the greatest importance, questions which are of almost as much importance as the question of the adoption of the Constitution itself, incorporated into the Constitution, to be submitted to the people, and voted on at the same time with the Constitution. These matters necessarily involve questions with which the adoption of a State Government has not, or need not have any connection. On the contrary, I voted previously for an amendment allowing aid to be granted to the Pacific Railroad, for the simple reason that it did leave the question to be determined upon by the people at a subsequent time. I believe in leaving all important questions to the people, but I do not believe in incorporating all the important questions in the world into one instrument, to be submitted to the people at one time. I wish the people to retain the power to aid a railroad across the Sierras, whenever they may deem it proper to lend their aid, and I shall vote for any amendment, which is not too loose in its construction, having that object in view.

Mr. STURTEVANT. The ideas of the gentleman last up are very good, but they are unlike those of my worthy friend from Storey, (Mr. Taser,) who preceded him. The gentleman from Storey says he sees no objection to this motion, inasmuch as the question is going to be left to the people, but I will tell the gentleman the objection which I have to it, and which has been illustrated here for several days past. I am afraid of that enormous vote which the gentleman has the pleasure in part to represent. With that vote they can "wax" all the balance of us. [Laughter.] That is my objection, or at least one of my objections. This mammoth county of Storey can now send delegates here pretty nearly equal, in point of numbers, to all the balance of the Territory. It is much larger than any other county in the Territory, or in the State, as it may be, although I am in hopes, under the present circumstances, that it will not become a State. My objection is, that when it comes to a vote of the people they can beat us all back, if they hang together, and I have no doubt that in this matter they will. The gentlemen who represent Storey County here are all very influential, and no doubt they could carry this question in their county, but gentlemen will remember that the people of the rural districts, and the floating property, have got to pay all the taxes, and they will have a very poor chance, I am afraid, to get in any such restrictions as will prevent the railroad company from taking every thing they want, and running off with it with impunity. Therefore I say, in the first place, that my objection to this amendment is, that it benefits nobody but the owners of mining property, which, as has been already urged here, is the property particularly and peculiarly interested in the railroad, and benefited by it. These mining counties have a tremendous vote, which would be very likely to be cast entirely for their own interests, especially since, through the influence of my friend from Storey County on my right, (Mr. DeLong,) they have got engrafted into the Constitution a provision which "lets them out" of paying any taxes. Not satisfied with driving two horses, they will think they must drive four, and go scooting through the country at a tremendous rate of speed. Money comes easy out of the mines, and goes easy, and it will be easy for them to get votes enough to carry through any railroad scheme. Everything will go easy, except with the rural districts and the floating property. These are my principal objections.

Mr. GIBSON. Gentlemen have been talking here all along of the Central Pacific Railroad Company, just as though there were no other railroad company striving to reach our borders. Now I wish to state to the Convention that there is another railroad in progress, and by the first day of August next that road will have as many miles completed as the Central Pacific will have. At this time they are laying the rails upon their road from Folsom towards this valley, and they will have in running order on the first day of August thirteen miles of railroad this side of Folsom, which will make a few more miles of railroad this way from Sacramento, than the Central Pacific will have. Now, sir, this company has never been asking for State aid to help its road along, but those who compose it have

gone to work with their own means. There are now engineers on the route surveying the line of the road from Placerville eastward towards this valley, and they believe they have got, and are at work upon the most feasible route of any of the routes proposed. Not having to tunnel through the Sierra Nevada Mountains, their road can be built, they think, at much less cost than any other, the cost of the road by the Placerville route being only estimated at eleven hundred thousand dollars, running from Folsom, and in connection with that the Freeport road is now in running order, striking the river fourteen miles below Sacramento, and thereby saving an hour and a half of steamboating, and gaining one hour in time.

Mr. PARKER. I would like to ask the gentleman this question: Has any railroad company ever obtained or asked for a charter to extend or complete a road towards this Territory this side of Placerville?

Mr. GIBSON. I understand that this railroad company have. They are to connect with the Placerville road, running up the American River by way of Strawberry, and then through to this valley.

Mr. WARWICK. Will the gentleman allow me to ask a question? Are not the rails of the Freeport road now being taken up to use on that portion of the line between Folsom and Placerville?

Mr. GIBSON. I believe not.

Mr. WARWICK. I believe they have abandoned that road altogether, after five months unsuccessful opposition to Sacramento.

Mr. GIBSON. I only know that some five or six miles of the track this side of Folsom are already laid, and they have not, like the Central Pacific Railroad Company, stopped their work, but are still pushing it forward. Why gentlemen should be so anxious to encourage one road, on which the work has been discontinued, as against another, which is being pushed forward with vigor, I do not understand. If this State shall be able to lend its aid at all, I am in favor of lending that aid within our own borders, and gentlemen are aware that the Central Pacific Railroad is to strike us forty miles from this place and thirty-two miles from the city of Virginia. It will be necessary for us therefore to connect with that road, at that point, and if we have any money to lend, or to give, I hold that we should use it to connect the road with us.

Mr. WARWICK. I understand the gentleman to state that the Pacific Railroad comes only within forty miles of this place. I desire to ask what is the distance which the gentleman estimates between here and Washoe City?

Mr. GIBSON. They do not propose to strike Washoe City at all, but to come in beyond that—the other side of the range.

Mr. WARWICK. The line certainly does not run the other side of the Truckee River, and that is only twenty-three miles from here.

Mr. EARL. The road strikes the State line near Crystal Peak, which is about forty miles distant.

Mr. GIBSON. That is my understanding—that the Central Pacific Railroad strikes the State line forty miles from this place and over thirty miles from Virginia; and in order that it may be of any benefit to us it is necessary to connect from Virginia and from this point with that road. Now I say if we have any money to lend or to give to any railroad enterprise, I think it should be lent or given in this Territory or State, and not in the State of California. My colleague (Mr. Kinkead) has prepared an amendment providing for the loan of the State aid to a railroad to be constructed for that purpose, which I hope he will present for the consideration of this Convention; and I trust we shall not, as this amendment proposes, give all our aid to a road to be constructed outside the borders of our State.

Mr. DUNNE. Will the gentleman allow me to interrupt him. I understand him to say that he wishes to leave this matter so that if there should be any opposition line hereafter we can give the same chance to the State to extend aid to that opposition as to the Central Pacific Railroad line.

Mr. GIBSON. I desire to give the same to each road.

Mr. DUNNE. I agree to that, and will be happy to act upon that suggestion. But I will now suggest that it is nearly the time for adjournment, and I think we had better have some consultation on this subject. I suggest, also, that we are apparently approaching the close of our labors, and as both the Committee on the Judiciary and the Committee on Education desire to meet to-night, I will ask for an adjournment of the Convention until to-morrow morning.

Mr. GIBSON. I will give way for that purpose.

Mr. DUNNE. Then I move that the Convention adjourn until nine o'clock, A. M., to-morrow.

The question was taken, and the motion was agreed to.

Accordingly, at five o'clock, P. M., the Convention adjourned.

FOURTEENTH DAY.

CARSON, July 19, 1864.

The Convention met at nine o'clock.

On motion of Mr. BANKS, (the President being temporarily absent), Mr. HAWLEY was requested to act as President *pro tem.*, and took the chair.

The roll was called, and the following members responded to their names: Messrs. Banks, Brady, Brosnan, Collins, Crawford, Crosman, Dunne, Earl, Folsom, Hawley, Hovey, Hudson, Kennedy, Lockwood, Mason, Parker, Sturtevant, Warwick, and Wetherill—19.

On motion of Mr. DUNNE, there being less than a quorum present, a call of the House was ordered.

Messrs. Chapin, Frisell, and Tuglaben came in and presented excuses for their absence.

On motion of Mr. STURTEVANT, there being a quorum in attendance, further proceedings under the call of the House were dispensed with.

Prayer was offered by Rev. Mr. NIMS.

The journal of yesterday was read, corrected, and approved.

Messrs. Kinkead, DeLong, Gibson, Proctor, McClinton, Murdock, Haines and the President, who had come in during the reading of the journal, severally, upon motion, had their names recorded as present.

THE SCHEDULE.

Some discussion took place in relation to the manner in which the Committee on the Schedule had been constituted.

Mr. LOCKWOOD, at his own request, was excused from service on that committee, leaving it to consist of the following members: Messrs. DeLong, of Storey; Dunne, of Humboldt; Kennedy, of Lyon; Haines, of Douglas; Wetherill, of Esmeralda; Warwick, of Lander; Belden, of Washoe; Proctor, of Nye; Murdock, of Churchill, and Johnson, (the President,) of Ormsby.

REPORTS.

[The PRESIDENT in the chair.]

Mr. HAWLEY, from the Committee on Enrollment, presented the following report:

To the President and Members of the Constitutional Convention of the State of Nevada:

Your Committee on Enrollment beg leave respectfully to report, that they have examined the enrolled copies of the Resolution, Preamble, and Article I of the Constitution, entitled "Declaration of Rights," and find the same correctly enrolled—(having carefully compared the same with the engrossed copies as passed, with the exception of the definite article "the" before "citizens of the United States," in the ordinance; and they recommend, also, the insertion of the word "and" before the words "no person shall be convicted of treason," etc., in Section 19 of Article I as enrolled.

All of which is respectfully submitted.

A. T. HAWLEY, Chairman.

Mr. BANKS. Those words, I understand, were stricken out by order of the Convention upon the report of the Committee on Phraseology, and therefore no action is required by the Convention. It is only necessary to correct the error which has occurred in the enrollment.

Mr. STURTEVANT. I rise to a question of order. I think it is not in order for the Committee on Enrollment to report anything, unless it is correctly enrolled.

The PRESIDENT. That is the only legitimate report; yet, upon the recommendation of the committee, it would be within the power of the Convention to make the amendments suggested. But this last amendment, I will suggest, seems to be in conflict with the action of the Convention on the report of the Committee on Phraseology, that the word "the" should be left out.

Mr. HAWLEY. If there is no objection, I will withdraw that portion of the report.

Mr. BANKS. As to the other amendment—the word "and"—I think the word should be there, although it is not in the engrossed copy. But I understand that the duty of the Enrolling Committee is to see that an article is enrolled in exact accordance with the engrossed copy, and if it is not so enrolled they should not report it, but have the Clerk re-enroll it.

The PRESIDENT. The gentleman is quite correct as to the duty of the Committee; and the object of having a Committee on Phraseology was to avoid bringing up these questions. It is the province of the Committee on Enrollment to see that each article is properly enrolled, according to the previous action of the Convention. Nevertheless, I suppose it is within the power of the Convention to make the amendment, upon the recommendation of the Committee, and it does not seem to make any material difference in what manner it is done.

Mr. BANKS. But I understand the committee to report that this article is wrongly enrolled.

The PRESIDENT. I understand the committee to report only that the enrollment is slightly variant, and they desire to incorporate a word which they regard as necessary to the full understanding of the section.

Mr. DeLONG. Very well; let us constitute ourselves a labor-saving machine, and make this slight amendment now, by general consent.

The PRESIDENT. If there is no objection, the question will be on the adoption of the report.

Mr. HAWLEY. Will the Secretary read the report as now amended?

The SECRETARY read as follows:

"Your Committee on Enrollment beg leave respectfully to report, that they have examined the enrolled copies of the Resolution, Ordinance, Preamble, and Article I of the Constitution, entitled 'Declaration of Rights,' and find the same correctly enrolled; and the committee recommend the insertion of the word 'and' before the words 'no person,' in Section 19 of Article I."

The question was taken upon the adoption of the report as modified, and it was adopted.

Mr. KINKEAD, from the Committee on Phraseology and Arrangement of the Constitution, submitted the following report:

Mr. President—Your Committee on Phraseology and Arrangement of the Constitution have had under consideration Articles II, III, IV, and V, and beg leave to report that in their opinion the several articles should be incorporated in the Constitution in the order in which they are respectively numbered. They recommend the insertion of the word "the" before "members," in the first line of Section 13 of Article IV. Also to strike out the word "nor," in the fourth line from the bottom of section 20, in the same article.

Respectfully submitted.

J. H. KINKEAD, Chairman.

The question was taken on the adoption of the report, and it was adopted.

Mr. BROSMAN. I move, if it be in order, that Section 26 of Article IV, which designates subjects which shall not be specially legislated upon, be so arranged in the enrollment that each clause specifying an inhibited subject shall commence with a capital letter, and end with a colon. I think it will simplify that section, and avoid any confusion which might occur from the use of the word "nor," or the word "or." Gentlemen of the Enrolling Committee will find in the Constitution of Indiana a similar section, which may furnish all the guide they will need in the enrollment.

The PRESIDENT. The Chair thinks it would be eminently proper—taking the Constitution of Indiana as a guide—to make such arrangement of that section.

The question was taken, and the motion was agreed to.

REFERENCE OF ARTICLES.

Mr. DUNNE offered the following resolution, which was adopted:

Resolved, That Article XII, entitled Education, be read by its title, and referred to the Committee on Education; that Articles XIII entitled Militia, XIV entitled Penal Institutions, XV entitled Boundary, and XVII entitled Amendments, be read by title and referred to the Committee of the Whole; and that Articles XVI entitled Miscellaneous Provisions, and XVIII entitled Schedule, be read by title and referred to the Committee on Schedule.

The several articles named in the resolution were accordingly read by title, and referred as indicated.

The PRESIDENT. It will be seen that, by this resolution, and by the previous action of the Convention, disposition has been made of all the articles in the Constitution, all of which have now been referred to appropriate committees.

LIMITATION OF SPEECHES.

Mr. EARL offered the following resolution, which was read:

Resolved, That debate be restricted to ten minutes, and but once on the same subject; and that when in Committee of the Whole, the committee be instructed to restrict debate to ten minutes.

Mr. EARL. In offering that resolution permit me to say that I do not wish to cut off any member from speaking a reasonable length of time, but it does seem to me that we are consuming a large amount of time unnecessarily, and that a resolution of this kind will expedite our work.

Mr. PARKER. I call for a division of the question. I see that the resolution instructs the Committee of the Whole to limit debate, and I think that is out of order.

Mr. EARL. Will the gentleman show me wherein it is out of order?

Mr. PARKER. We have no business to dictate to any committee. I have the authority of Jefferson's Manual for that.

Mr. DeLONG. I rise to a question of order, which is, that we cannot restrict debate in Committee of the Whole.

Mr. EARL. We cannot restrict the number of speeches, but we can certainly restrict the time; at any rate it is so laid down Jefferson's Manual.

After considerable discussion upon the question of order.

The PRESIDENT decided that the point of order was not well taken.

Mr. COLLINS. I think we have proceeded very well thus far without such a limitation, and I do not see the propriety or the necessity of adopting it at this time, when we are probably near the close of our session.

The PRESIDENT. We have already adopted a resolution restricting debate to fifteen minutes, and that is a standing rule in this body, but unless objections are made to a member's proceeding the Chair has not felt himself authorized to enforce the rule. The objection must come from the body of the Convention, and not from the Chair.

Mr. PARKER. Under the ruling of the Chair I withdraw the call for a division of the question, but I would ask if in Committee of the Whole any member can be permitted to speak more than once?

The PRESIDENT. That would be the ruling, if this resolution were adopted in place of our former rule.

Mr. PARKER. I ask if in Committee of the Whole, under this resolution, each member would be restricted to speaking only ten minutes, and only once on a subject?

The PRESIDENT. That would be the understanding of the Chair. If this resolution should be adopted, such will be the ruling of the Chair.

Mr. PARKER. From that decision I will be obliged to appeal, on the ground that, according to Jefferson's Manual, in Committee of the Whole, every member may speak as often as he pleases.

The PRESIDENT. The gentleman had better take his appeal from the ruling of the Chair that the resolution is in order.

Mr. DUNNE. Will the gentleman allow me to call his attention to the wording of the resolution, which says that a member shall speak only once in Convention, but in Committee of the Whole it only limits the time.

Mr. EARL. That was my intention—that members should not be restricted in Committee of the Whole as to the number of times of speaking, but should be limited to ten minutes. I understand that according to Jefferson's Manual any member may speak in Committee of the Whole as often as he pleases, but we can limit the time.

Mr. DeLONG. In the discussion of propositions of this character I think we consume more time than would be likely to be wasted in speaking, and besides, if two-thirds of the members desire it they can suspend any such rule, and they would undoubtedly do so, in case any member should desire to explain his action, for

instance upon the ground of having been misunderstood. Now we have consumed a great portion of this forenoon, without transacting any business of importance, and I move that this resolution be laid on the table.

The PRESIDENT. The question will be first on the appeal.

Mr. PARKER. I withdraw it.

The question was taken on Mr. DeLong's motion to lay the resolution on the table, and upon a division the vote was—ayes, 17; noes, 8.

So the resolution was laid on the table.

RIGHT OF SUFFRAGE.

Mr. DeLONG. It has been suggested by one or two gentleman here, that Article II, entitled Right of Suffrage, contains one or two errors, which have crept into it perhaps unnoticed. The article has passed its third reading, and I have been requested to move its reference to a committee of five, without special instructions, in order to point out one or two particulars in which it seems to be erroneous. It is so worded apparently as to disfranchise certain persons, who are good citizens, and it also renders certain other persons ineligible to office. In these and some other respects some change of language may be advisable, and in order to expedite business, and save time, I move that the article be referred, without instructions, to a special committee of three.

The PRESIDENT. It will be necessary first to reconsider the vote by which the article was passed.

Mr. DeLONG. Very well; I make that motion.

The question was taken by yeas and nays upon the motion to reconsider, and the vote was—yeas, 25; nays, 4—as follows:

Yeas—Messrs. Banks, Brady, Brosnan, Chapin, Collier, Crosman, DeLong, Dunne, Earl, Frisell, Folsom, Gibson, Hanna, Hovey, Hudson, Kennedy, Kinkead, Mason, McClinton, Murdock, Parker, Proctor, Tagliabue, Wetherill, and Mr. President—25.

Nays—Messrs. Crawford, Hawley, Lockwood, and Sturtevant—4.

So the vote by which the article passed was reconsidered.

The question recurred upon the passage of the article.

Mr. DeLONG. I now move to suspend the rules, and that the article be recommitted to a special committee of three, without instructions.

Mr. WARWICK. Can it be recommitted without special instructions?

The PRESIDENT. It can, by suspending the rules for that purpose.

The question was taken on the motion to suspend the rules, and it was agreed to.

The question was next stated upon the motion to recommit to a special committee of three.

Mr. STURTEVANT. I would really like to know what is going to be done by that committee. Is it going to strike out the word white??

Mr. BANKS. The Committee on Phraseology found it indispensable to have certain corrections made in this article, in order to express clearly what the Convention intended. That committee did not think it their duty, or at least within their province, to report these amendments. It is provided, as the article now stands, by the insertion of a proviso, that persons who are in the military service of the United States in this State, shall not have the same privileges as are enjoyed by persons in the military service of the United States outside of this State. In order to correct an error of that kind, it will be necessary to entirely re-model the section, and I therefore hope the motion to refer to a special committee will prevail.

Mr. STURTEVANT. I should think it would be better to refer it to the Committee of the Whole.

Mr. DeLONG. It is not necessary. The Committee of the Whole have other matters to attend to, and a committee of three could probably do all that is necessary in twenty minutes, leaving the Convention to attend to other business.

Mr. STURTEVANT. According to my idea, this subject of the right of suffrage is about as important as any matter before us, and I think the article had better go to the Committee of the Whole.

Mr. DeLONG. The gentleman from Washoe will have an opportunity to vote upon any amendment which may be proposed, and he can see what has been done when the committee shall make their report.

Mr. STURTEVANT. I move to amend the motion by referring the article to the Committee of the Whole.

The PRESIDENT. I will state that the errors referred to have crept in by inadvertence. It is almost impossible, sitting here in a large body like this, to perfect an article or a section in such a way as to avoid all errors. I think a special committee, to be named, if gentlemen please, by the members of the Convention, would be more likely to perform the required duty well than the Committee of the Whole; and of course their report will be within the control of the Convention, either to adopt or reject it.

Mr. STURTEVANT. I withdraw my motion.

The question was taken on the motion of Mr. DeLong, to refer the article to a special committee of three, without instructions, and it was agreed to.

The PRESIDENT subsequently appointed Messrs. DeLong, Kennedy, and Mason, as such committee.

PACIFIC RAILROAD.

The Convention resumed the consideration of Article VIII, entitled Municipal and other Corporations, the question being upon the motion of Mr. Crosman to recommit the article, with instructions to amend Section 9 by adding after the word "purpose," the following words:

"Provided, That the State of Nevada may loan its credit to the Central Pacific Railroad Company to an amount not exceeding three millions of dollars, when it shall have completed its road to a distance of eighty miles east from the eastern extent of the mountainous land; and the aggregate extent of any subsidy so made, before mentioned by a vote of the people."

Mr. GIBSON. When the hour arrived for adjournment last evening, I had the floor upon this question, and I mentioned that my colleague, (Mr. Kinkead,) had proposed an amendment, which I requested him to present as a substitute for the one offered by the gentleman from Lyon, (Mr. Crosman.) I will give way now for him to present it, and to explain its object, if he desires, and afterwards I may resume my remarks.

Mr. KINKEAD. Is an amendment to the amendment in order at this time?

The PRESIDENT. Yes, sir.

Mr. KINKEAD. I offer the following as a substitute for the proviso.

The SECRETARY read as follows:

"Provided, That the State may issue bonds bearing a rate of interest not exceeding seven per cent. per annum, to an amount not exceeding one and one half millions of dollars, or guarantee the payment of interest, or principal, or both interest and principal, of bonds to the said amount, on such terms as the Legislature may prescribe, to the company or incorporation that shall first construct, by a first-class railroad, the city of Virginia with the main range of the Sierra Nevada Mountains."

Mr. KINKEAD. In offering this amendment, Mr. President, I wish very briefly to present for the consideration of gentlemen of the Convention a few hastily arranged arguments in favor of the proposition, being firmly convinced that if it is adopted by this Convention, and its provisions carried out by the Legislature, it will prove of the highest importance to the State, and be the first real solid step towards the permanent development of the vast resources of our country.

I desire to say here, that in presenting this amendment I am actuated by no hostility to the Central Pacific Railroad Company. On the contrary, no one on this floor can have a higher appreciation of the importance of that great work than I have, and there is no one here who would go further to aid in its construction, by any and all means within our power. I fully realize the almost incalculable benefits which would result from the completion of that road to our State. But, sir, we are yet young, and financially feeble, and it is well perhaps not to be hasty, but to look around and see if the desired object cannot be accomplished, partially at least, in a cheaper and more expeditious manner. The object, as I understand it, of the friends of this railroad proviso, is not so much to benefit the Central Pacific Railroad Company, as it is, by aiding that company to complete their road, to secure a great and permanent good for this State. The proposition almost unanimously agreed to, the other day, by this Convention, was to give to that railroad company which should first reach the border of our State the sum of three millions of dollars, or fifty thousand dollars per mile for each mile constructed, until the aggregate amount would reach that sum. This would insure the building of sixty miles of road, but it could not be even commenced until after a railroad should first have been completed to our State line. Now the most sanguine advocate of the Pacific Railroad, or any other railroad proposed to be built over these rough and rugged mountains, does not believe that the work can be done, under the most favorable circumstances, in less time than six or eight years, and very probably it will require even a longer time. But, sir, I predict that if the amendment I have offered is adopted by the Convention, and acted upon by the first Legislature, this same sixty miles of road will be built, equipped, and running, within two, or at farthest three years, from the time this aid is given, and for half the sum heretofore proposed to be given to accomplish the same purpose. Aye, sir, within twelve months enough of the road would be built to save to the people of Storey County alone, every year, double the amount mentioned in this amendment.

I do not make this statement unadvisedly, Mr. President. I have before me a report compiled with care by a competent railroad engineer, containing statistics gathered from unquestionable authority upon this point. This report I will mention was made to the Territorial Legislature by a railroad company, and it contains an estimate of the cost of a portion of the road, and also an estimate of its probable revenue, showing the difference in cost of transportation of a few prominent articles which are largely used in Storey County, by wagon and by rail. The proposed route of this company commences at Virginia, running thence to Gold Hill, then through American Flat, skirting Silver City, to a point near what is known as the "Half-way House," (there branching to Dayton,) thence to Carson City, and through Washoe Valley to the Truckee River and the State line. This route I may state is the only practicable one from Virginia to the Truckee River and Meadows. It has been surveyed from Virginia to Washoe City, the grades are found to be easy, nowhere exceeding eighty feet to the mile, and the whole route is entirely practicable—the larger portion of the road running through an almost perfectly level country. As an illustration of the benefits to be derived from the construction of this road I will quote certain statistics from the report of the engineer, showing the estimated reduction on the cost of two articles—fuel and lumber. He estimates the amount of fuel consumed in the three towns of Virginia, Gold Hill, and Silver City, at two hundred and ninety-three cords per diem, on which there would be a reduction of five dollars per cord, if the transportation were by rail. He also states the average amount of lumber and square timber used daily in mining and building at one hundred and twenty-five thousand feet, on which the cost of transportation

by wagon is twenty dollars per thousand, while by rail it would not be more than ten dollars.

I will further add that this estimated consumption of these two articles was not guessed at, but obtained from positive, reliable information, and that, too, nearly two years ago. I cannot be far wrong in stating that the daily consumption of these articles is now nearly or quite double what it was then. But, sir, take the amount as shown by this report (made in the fall of 1862) and we find an annual consumption of one hundred and eight thousand cords of fire wood, in the towns of Virginia, Gold Hill, and Silver City. The engineer estimates a saving of five dollars per cord, certainly a very low estimate. Besides, we all know that the difficulty of obtaining fuel at Virginia increases every year, with the increase of the distance which it has to be hauled by wagons, and of necessity the cost must continue to advance in proportion; but even at the low estimate of five dollars per cord we have an annual saving of five hundred and forty thousand dollars. The estimate for wagon transportation of the article of lumber is again too low; the engineer gives it at twenty dollars per thousand feet. I think thirty dollars would be nearer the proper mark, but say twenty dollars, and still we have another saving on the amount of lumber and timber used of four hundred thousand dollars. Thus in these two items alone a million of dollars would be annually saved to the people of Storey County, and I verily believe, sir, that the true figure at this time would be quite double that amount. The moment the road is finished to the base of these mountains this result is accomplished, to say nothing of the additional saving in the immense amount of other business, passenger travel, etc. Again, the road continued on through Washoe Valley to the Truckee River, opens a water power, unlimited in extent, immediately contiguous to boundless forests of unsurpassed timber—affording the great desideratum of our country—a cheap means of working our lower grades of ores. I would not dare venture, sir, to attempt a computation of the immense wealth which by this means would be speedily developed.

Gentlemen may object to this amendment on the ground of its being special legislation, but I contend that it will benefit the entire State more directly than could possibly be shown by any other enterprise. The road once built from the Truckee to Virginia would necessitate the speedy construction of a like road to Lander and Humboldt counties. And even our friends from Esmeralda would be benefited, not only indirectly, by the general prosperity of the State, but directly, by the introduction of a class of capital that would eagerly seek investment in a railroad to connect their own mines with the unlimited water power of the Walker River country. There is no place, sir, on the face of the globe where railroads will pay such enormous dividends as they will here in our own Territory, and that, too, notwithstanding the great expense to be incurred in transporting all the material by wagon, over the long road separating us from the navigable waters of the Pacific. I am entirely within bounds when I state that a railroad, from Virginia to the Truckee would pay a monthly dividend of from three to five per cent on the cost of its construction and equipment, even with every particle of its material hauled by wagons from Folsom here.

It may be asked, if this is the case, why capitalists do not undertake the work. My answer is, that they are ready and anxious to do so the moment our own people show their confidence in the enterprise by doing something for it, either in the way of private subscriptions or by public aid. Foreign capital must build these roads. Our own people find only too many demands upon and uses for their cash in opening and developing the mines, and in the prosecution of the various branches of business incidental thereto. The truth is we have no surplus capital with which to build railroads, however much we realize their necessity. But the State can lend a helping hand, that will insure their speedy construction, and at the same time the burden will be felt very lightly by individual citizens. A great, imperative necessity exists here for internal railroads, and by encouraging this first entering wedge in a railroad system, I state with great confidence that long before the Central Pacific Railroad can possibly reach our border we will have a railroad of our own at the State line ready to meet it—a road not only sixty, but two hundred and sixty miles in length, extending through our State from west to east, and forming, if you please, a link in the great national chain, connecting the Atlantic with the Pacific Ocean. In this way, sir, we will truly aid the construction of the great Pacific Railroad, and at the same time be opening up the almost fabulous amount of wealth existing in our midst.

I am not here, Mr. President, to advocate the claims, or to seek aid for any particular railroad company. My only object is, to place in the hands of the Legislature the power to aid, if in their judgment they think it wise, the kind of enterprise I have alluded to. I have barely glanced at the importance of this matter. It would take a much longer time than I care to occupy to do the subject full justice. I leave it for gentlemen to consider, and to draw their own conclusions.

Mr. COLLINS. It occurs to me that this amendment provides for aiding a railroad rather too local in its character for a public enterprise that ought to receive an appropriation from the State. If it contemplated that this road should extend as far east as Austin, or to the boundary of the State somewhere to the east of us, so as to be of practical benefit to every portion of the State, as well as to the western portion, or that portion lying directly in the line

of the road, I am not sure but I might fall in with something of the kind.

Mr. KINKEAD. I will state that, as I said before, the effect of this road being completed, opening up the region of water power, and lumber, and timber, as far as Virginia, would be to confer a very considerable benefit upon the regions beyond. Very little difficulty, I apprehend, would be encountered in building a railroad to the Reese River region after a road had been completed as far as Virginia. The building and working of this road would absolutely compel the building of a further road connecting with that, and ultimately it would run into and form a part of the great Pacific Railroad. We should have a road completed entirely through between the boundaries of our State, from the east to the west, before the Pacific Railroad could get through so as to connect with it.

Mr. COLLINS. I have listened attentively to the remarks of the gentleman from Ormsby, (Mr. Kinkead,) and I repeat that if the principle involved in his proposition could be extended so as to refer to the eastern portion of the State, I am not sure but I would vote for it. Therefore I hope that the gentleman himself, or some one else, will move to amend it so as to embrace the more extended enterprise. I am really strong in the conviction that the great eastern counties of the State need a railroad vastly more than Virginia does. There they are suffering for the want of lumber, and they have to pay two or three prices for all their freight. While a railroad would undoubtedly be of great advantage to Virginia, certainly it would be of vastly greater to the eastern tier of counties, and I think no such enterprise should receive the pecuniary sanction of a State, which is not going to be of general benefit to that State. I believe that a railroad along on the line contemplated by the Pacific Railroad Company, constructed with a gauge adapted to that road, that should not contemplate the use of the heavy and expensive "T" or "H" rail, but should be satisfied for the time being with a lighter and less expensive rail, until the great Pacific Railroad shall be enabled to tap our State, might possibly be constructed. For such a road, temporary rails of only half inch or three-quarter inch iron, might be made to answer every practical purpose as well perhaps as the "T" rail, for the time being. Such rails have answered a very good purpose heretofore in New York, in New England, and in the western States, and undoubtedly they would here answer their purpose excellently. And I think it would be a piece of extravagance for any company to contemplate or think of freighting over, at the rate of perhaps five cents a pound, rails that weigh from fifty-five to seventy pounds to the yard. With these lighter rails the road could be constructed very cheaply, and they would serve us well enough in the way of transportation across our Territory. Freight could be taken from here to Austin by such a railroad for perhaps one cent per pound, or twenty dollars a ton. That would give them lumber there at fifty dollars, or thereabouts, per thousand, and it would open up to them all those great facilities for mining and reducing ores which exist in Virginia, in Carson, in Steamboat Valley, and in Douglas County, and so the road would benefit the whole people of the State. There might be a branch to Esmeralda, too, and it occurs to me that such an enterprise would be of very great importance, while the Pacific Railroad would be in the meantime lessening the distance between O'Neill's Crossing and the Sacramento, or the tide waters of the Pacific. In a very short time, in that way, our freights would be reduced down to something within the range of the means of all of us.

Mr. DELONG. Where is the proposed line of the Pacific Railroad in this State?

Mr. COLLINS. I do not remember exactly, although I have seen it on the map.

Mr. DELONG. I believe it is east and north of Virginia, and no portion of the route suggested in this amendment is contemplated to be used by the Pacific Railroad.

Mr. COLLINS. The idea I have in my own mind is for this road to come down the Steamboat and Washoe valleys, hugging around the foothills, so as to reach Virginia at the most convenient point, and then take a turn towards the eastern limits of the State. I have not consulted with other gentlemen in regard to it, but that would seem to me to be the most practicable route.

The PRESIDENT. And where would it tap the Pacific Railroad?

Mr. COLLINS. It would tap the Pacific Railroad at some point east and north of Virginia. I do not propose to discuss this idea, but I do hope the gentleman from Ormsby will make an amendment in such a manner that this railroad shall be a State affair instead of being merely a local matter. Let us give these advantages, if at all, not to one section alone, but to all the State.

Mr. FRIZELL. The question at the present time occupying the attention of the Convention is a momentous one. It is a question which might well engage the attention of the most profound political economists, the hearts of the truest and warmest lovers of their country, and the heads of the greatest statesmen. It is therefore with the utmost diffidence that I rise to make a few remarks upon that question.

Our situation here is a peculiar one. We are isolated from the rest of the world. We are hemmed in, as it were, by almost inaccessible barriers. The inducements for the investment of capital here are wonderful, and they are increasing every day. Whilst we are proposing to start out in our career as a State, this question naturally presents itself to the minds of the members of this Convention, what can we do to aid an enterprise which has for its object the opening up of an easy line of communication

between us and the rest of the world? Now, sir, I am willing to admit that the motives which have influenced gentlemen in this Convention, which influenced the gentleman from Ormsby (Mr. Kinkead) in offering this amendment to the amendment of the gentleman from Lyon, (Mr. Crossman,) and which influenced the course of my colleague from Storey (Mr. Collins) on this, and on the former occasion, have been the best in the world. I am not only willing to admit it, but I will say that I know that the motives which have actuated these gentlemen, and which actuate every other member of the Convention, are noble, generous, and praiseworthy. But the experience of almost every American who has lived to the age of thirty years, the experience we have had in this country, and in the settlement, progress, and development of the Western States, rises up in our memory, and stands before us to-day, as a warning that we should be careful, whatever we may do, not to hamper the energies of the people by placing a load of debt upon a young State. Besides that, our position at the present time is peculiar. It taxes our entire intellectual and mathematical knowledge and skill to devise ways and means by which to defray the expenses of the proposed State. That is the principal topic of conversation among the members of this Convention. The idea is such a grand and noble one, and so peculiar to the American mind, of fostering and aiding internal improvements, that we catch at it at once, as the milkmaid did at her green gown. We catch up the idea without stopping to count the cost. By reason of our sense of generosity, and our sense of innate vigor, we are willing to grasp at anything which holds forth hope for the future. But I say it becomes us to consider this question well, before we take any action upon it. I said our position was a peculiar one. Starting out as a new State, with a population few and sparse, we have not only the expenses of our State to provide for, but we have also the taxes imposed by the Federal Government, though I concede that we are all perfectly willing to bear our share of all the burdens imposed by that government, which are looming up before us, both in the immediate and the distant future. Besides, all the wealth of the proposed new State now lies hidden and confined under the hard ribs of rocky adamant, of which our State is principally composed, and it will require labor and capital to bring out this wealth from the hidden depths of our mountains.

Now as regards the proposed aid to be granted by this young State to the Pacific Railroad, my views are these: According to the information imparted to the Convention by the President of that railroad company which contemplates this immense enterprise, unless we can help them in overcoming and surmounting the summit of the Sierra Nevada mountains, our aid will be of no practical benefit, for the reason that when they shall have once reached the confines of this young State, their progress thenceforward will inevitably be very rapid, without any further aid than they have already secured. I am almost certain that according to the information which, as I just now said, has been imparted to the Convention by the President of the company, in the course of one year and a half eighty miles of that road will be completed. Now, Mr. President, it is only one hundred and four miles from Sacramento to the summit, and consequently we will necessarily be called upon for this aid, or donation, inside of two years and a half. I think it is plainly demonstrable that even with all the prudence and economy which we must necessarily exercise, in order to bear the expenses of our State government, and our share of the national expenses, we could not afford to give the aid at that time. I think it would be simply an impossibility. Nevertheless, there is another idea which will occur to the mind of every progressive American citizen, namely: that this right to grant aid to that enterprise should really be left as a reserved right to the people, and that therefore we should not, in this Constitution, debar the people from ever exercising that right in the future, in case that Divine Providence, and our own energies—the strength of our own strong arms—should enable us to acquire an amount of wealth which shall place us in a position where we can afford to give such aid.

Now, Mr. President, the amendment offered by the gentleman from Ormsby, (Mr. Kinkead,) meets my approbation entirely, providing that we shall give our aid to the Pacific Railroad to the amount of a million and a half of dollars. There is no proposition of the kind now before the Convention, but an amendment might be made by which we should also grant a million and a half to the other road, spoken of by the other gentleman from Ormsby, (Mr. Gibson.) The route suggested by this pending amendment is also, as it seems to me, practicable. It sweeps around from Virginia, along the foothills, touching very nearly the waters of the Carson, then passes around the foothills, close to or in the immediate vicinity of an extensive range of timber, and thence reaches the waters of the Truckee, connecting there with the Pacific Railroad. That would be doing exact justice to the counties lying south of this route running from here to Virginia. It would be doing exact and equal justice to the county which you, Mr. President, have the honor in part to represent, and to Douglas and Washoe Counties; while at the same time it would be the greatest imaginable benefit to Storey County.

In these remarks, I am merely making suggestions which I think it would be well for us to consider, notwithstanding the cold water I threw on the proposition at the start, because I do think it is well never to mislead men, or to throw a false coloring upon anything. I think this matter of granting aid should be a reserved right to the people, and I do hope that

in good time they will be able to contribute to this enterprise. I would like to see this section so modeled, arranged, and made up, that—subject of course to the action of the Legislature, and the subsequent approval of such action by the people—a million and a half of dollars may be granted to the Pacific Railroad, and a million and a half more to the road spoken of by the gentleman from Ormsby, (Mr. Gibson.) That proposition is broad in its scope and noble in its character; and the only drawback or injury—the only thing about it in relation to which I feel any doubt—is that I fear our inability to contribute reasonably to those noble works. Still, I wish to show, when this Constitution shall be submitted to the people, that this Convention has done all it possibly could do in the way of promoting the interest of railroad communications, and that it has not stricken a blow at two of the noblest principles now extant—one, that of internal improvements, and the other the great principle of hope. I am not willing that this Constitution should go before the people with an entire prohibition on the subject of internal improvements, or that we should say that the State cannot, under any circumstances, contribute to these enterprises, because that strikes at the principle of hope. Let us keep that principle alive in our hearts, and I do hope that when the proper time arrives, we shall be able to do something for the advancement of these great enterprises.

Mr. WARWICK. The ancient historian informs us that an old Roman General, returning from the wars, was met at the gates of the imperial city by a crowd of citizens who rejoiced in his fame, and in the security which he had given them against their enemies, and the aid he had rendered them in maintaining their liberties; and it is related that, impelled by gratitude, they cast their helmets and shields, and ornaments of every character upon him, until the brave old warrior sank beneath the glittering pile; but before he sank, raising his head above the fatal monument of his fame, he exclaimed: "Save me! Oh, save me from my friends!" As I listened to the array of figures presented by the gentleman from Ormsby, (Mr. Kinkead,) and to the deductions he drew from them, of the benefits to be derived to the State of Nevada from the completion of the Pacific Railroad, I conceived that he must be a man most friendly to that enterprise, but I found that he manifested his friendship by casting his heaviest shield, beneath which the old warrior should sink to rise no more.

Mr. KINKEAD. Who is the old warrior?

Mr. WARWICK. I speak metaphorically, of course. I know the gentleman will pardon my personal allusion to him, and I think I used the highest term of compliment in regard to him when I said he was a "man." Now no man has yet been found in this Convention able or willing to get up here and declare himself opposed to the Pacific Railroad enterprise. No, sir, that would not do, because we know that the people are friendly to it, and therefore every gentleman must declare himself in favor of it, in some form. And as nothing else will do, they must endeavor to kill it with kindness. Sir, the great want of this State will be the construction of railroad communications which shall give us connection with the water, and the great difficulty we have to meet is how to secure the construction of such railroad communications. We must have some better means than we now have for obtaining our indispensable supplies. Admitting that we already have our wood tolerably handy, still that is but one article of prime necessity to us. If gentlemen will sum up the extra cost of transportation to our borders of every description of materials and supplies which we consume, they will find that the figures run up to hundreds of thousands, and I have no doubt, to millions of dollars every year. One gentleman, (Mr. Chapin,) who is an able advocate and friend of this measure, has told you that each month of the year you are paying, for the simple matter of teamsters' wages alone, as much as the interest would amount to in an entire year on the whole of the capital proposed to be loaned to the Pacific Railroad enterprise. Another gentleman, (Mr. Mason,) who declares himself to be an enemy of monopoly, has opposed the granting of this aid because he thinks it would go to the benefit of a monopoly, but he evidently forgets that by the terms of its charter the Pacific Railroad Company will be restricted, if you lend them this aid, to very nearly one-half the prices which are now paid for passages between here and California. The charter of the Pacific Railroad Company expressly states that the price of passage shall not exceed ten cents per mile, which for the whole distance of one hundred and seventy miles to Virginia makes the fare only seventeen dollars, while every one knows that we are now paying, and have for the past four years been paying, twenty-eight dollars, by the lumbering stages. That is to be the price, even allowing that the Railroad Company charge the utmost limit of price permitted by the law.

Mr. HAWLEY. They will do that.

Mr. WARWICK. Very well; let them do it. Still we obtain passage for a little more than one-half the present rate.

Now, as to the feasibility of connecting with that other railroad which some sage-brush engineer says may be constructed across the mountains before the Pacific Railroad can be completed. If we expend our energies upon that road what is the result? Why, sir, that railroad, even by the most feasible route that can be selected, would bring up at those great obstacles which God Almighty has not seen fit to remove, and it could only at last be brought into the valley thirty or forty miles from here. But this is not the point. Certain gentlemen think we are abundantly able to be liberal to that road, while with others the poverty of the

that is the great argument against giving any aid to any railroad. Now I think I have a proposition here which will meet that objection, and which, with the leave of the Convention, I would like to read for information:

"Provided, That the State may loan its credit to an amount not to exceed three millions of dollars, for the encouragement of railroad enterprises, the manner of granting the payment of the above sum to be left to the Legislature; but no appropriation shall be made unless authorized by a vote of the people at a special election to be held for that purpose, but until after the taxable property of the State shall have reached the amount of fifty millions of dollars."

Now, sir, there is a proviso, which I shall offer as an amendment, when it shall be in order; and I should like to know, if that could be incorporated in place of the amendment offered by the gentleman from Ormsby, (Mr. Kinkead), why it would not meet the reasonable desires of all parties on this subject? It specifies no particular road; it specifies no particular distance to be constructed; but it does specify that our poverty shall not be one of the questions involved, and that until our taxable property shall be double the amount it is today, no aid whatever shall be loaned to any railroad. I commend this proposition to the favorable consideration of the Convention. If gentlemen are really in favor of railroad enterprises, but feel that they cannot aid them until such time as the pecuniary condition of the State is better than it is at present, then here is a provision that ought to be satisfactory to them. No special road is named, and no special distance is named, but it simply provides that when the State shall have doubled its present amount of property, it may lend its credit to the extent of three millions of dollars in aid of railroad enterprises. This is a proposition by which every friend of a railroad can come forward and show his friendship in a practical way.

Now, Mr. President and gentlemen, I bring this forward as a test question. I want to see the men on the floor of this Convention who are really friendly to railroad enterprises. There is no Central Pacific Railroad here—nothing that compels the Legislature to appropriate a single dollar to any particular railroad whatever—but it says to any friend of the Pacific Railroad, or to any friend of any other railroad within or without our borders, simply that the State may lend its aid to a certain amount for the encouragement of railroad enterprises, but not until after the excuse of poverty shall have passed away. It is not to be done while we are embarrassed as we are now, or at any time during the future, when the contingencies of the present day may possibly occur again, but when the barrier of poverty is removed; when the increase of population and the development of the wealth of the country shall have placed us in a position to help a railroad, whether it be denominated the Pacific Railroad, or the Placerville Railroad, whether to the east or to the west of us, whether within or without our borders, when the people shall have the ability and the will to assist railroad enterprises, they may do so. The matter is not to be foisted upon them by any chicanery or political juggling, during the excitement of our present financial condition, but after we have assumed a proper status among the States of the Union, after our wealth shall have been developed and our property accumulated to the extent of double what it is to-day, then we can come forward if we will, and at a special election, when there is nothing else before the people to distract attention, when they have only and simply the proposition before them of "railroad—yes," or "railroad—no," they may decide to assist those works of internal improvement. If there be any argument against this proposition, I hope to hear it, and I beg gentlemen not to cover it up with any other amendments, but let us vote upon that naked proposition. Let gentlemen say plainly that they are for or against railroad enterprises. Let them not say they are here professing to be the friends, but covertly against all railroad enterprises, but let them say openly, either that they are against all railroad enterprises, or that they are friendly to them. I am here to advocate the cause of no particular company, but by this amendment I leave it open to the entire State of Nevada to say whether they will lend aid to any railroad enterprise, when they shall be able to do so.

Mr. HAINES. Is it intended by the gentleman's proposition, that the money may be used outside of the State?

Mr. WARWICK. It leaves that matter altogether open to the people.

Mr. HAINES. I shall vote against it, myself.

Mr. WARWICK. Well, that is honest, at least. The gentleman votes against railroad enterprises. He is an open opponent.

Mr. HAINES. The gentleman misunderstood me. I am in favor of railroad enterprises as much as any man, but I am opposed to building railroads in California.

Mr. WARWICK. Does the gentleman assume to-day, because the power happens to be in his hands, that he will prevent, for all time, the exercise of the right of the people to aid any railroad enterprise, when it shall be in their power? Is not he willing to defer to the will of the majority?

Mr. HAINES. The gentleman asks me a question, and I will answer him frankly. So far as my power goes, I shall try to prevent it; I shall vote against it.

Mr. WARWICK. Then having that power, the gentleman would exercise it?

Mr. HAINES. Only so far as my own vote is concerned. I shall vote against it; I shall exercise that power.

Mr. WARWICK. Exactly. We are here clothed with a little temporary power, and now we propose to say to the people, "You shall not, if you will, exercise your right to aid in the

construction of works of internal improvement, under any circumstances that may arise." Now this proposition leaves it open to the Legislature. The people have conferred upon us a little power, and the gentleman says he would exercise that power in such a way as to preclude the people, in all time to come, from deciding, by the exercise of their power at the ballot-box, to aid these important enterprises.

Mr. HAINES. The gentleman still misunderstands me, or he wilfully misrepresents me, and I desire to put myself right on this question. The gentleman from Lander knows very well that we are almost bankrupt to-day. We have not the means, and we are not satisfied that we can raise the means with which even to carry on a State Government. And the gentleman in his proposition might as well say "Pacific Railroad" at once, for there is not a member here but knows that the object is to aid that road. However, I am as anxious that the Pacific Railroad should be built as any man, and the gentleman from Lander knows that I am, but at the same time I am opposed to permitting the State by any possibility to be bankrupted by assisting any railroad. First and foremost, I object to leaving the matter to the Legislature. If such a question is left to the Legislature—the gentleman from Lander has seen how it was worked in the California Legislature, and possibly in other legislative bodies—the moment the question is left to them, if it were necessary, there would be a hundred thousand dollars brought here to corrupt the Legislature, and I venture to say that the gentleman has never seen any Legislature yet that was not more or less liable to be corrupted by the influence of money.

Mr. WARWICK. I have serious intentions of settling ultimately in Douglas County, and if I do I shall certainly vote for my friend from Douglas as a member of the Legislature, and I guarantee that not a million of dollars could corrupt him.

Mr. HAINES. Do not be too sure; I might not be invulnerable.

Mr. WARWICK. The gentleman's modesty I am afraid stands in the way of his advancement. [Laughter.] Now he brings up the objection of poverty again, but here is the answer to that, in the language of the amendment, "Nor until the taxable property of the State shall reach the amount of fifty millions of dollars." We must have double our present amount of taxable property.

Mr. HAINES. That point has been discussed considerably. Now by the time we have fifty millions of property, our taxes will be double or treble what they are now. Admitting that we have taxable property to the amount of fifty millions of dollars, we must allow a hundred thousand for stealings in the State Government. That has been the experience of California, at least. I really hope my friend will back me when I say that the State Government in California, since the organization of that State, has not fallen short of an annual cost of three hundred thousand dollars, and I think it will approximate nearly to five hundred thousand. If we take that as a precedent for our calculation we shall find that fifty millions will be a very small amount upon which to raise the means necessary to carry on our State Government.

Mr. WARWICK. The gentleman bases his calculation on a precedent is so wise parallel to our own condition. If I may be permitted, although the discussion of the subject has taken a very wide range already, I wish to refer back to, and controvert if possible one statement made by the gentleman, and that is a proposition not advanced, or at least not altogether originated by the gentleman from Douglas, but advanced also by another gentleman, equally a friend to the Pacific Railroad, to wit, that our expenses as a State would amount to three hundred thousand dollars a year. This I contend is an erroneous statement, and for this reason: The fact is, as both those gentlemen know, that the State of California, in early times, was in an altogether different condition from the State of Nevada at the present time. A series of riots ensued upon the organization of that State to which I believe the world knows no parallel. Again, the affairs of the State were administered in the most extravagant manner, and consequently the expenses run up to enormous figures. For example, clerks were allowed from twenty to forty and fifty dollars per day.

Mr. JOHNSON. But California had resources to begin with; the money was collected and paid out of the "Civil Fund," as it was called. It was paid over by Governor Riley, for the purpose of setting the State Government in operation, and it came out of the General Government. There was an ample fund for the purpose.

Mr. WARWICK. But how soon was that fund exhausted?

Mr. JOHNSON. So far from being exhausted, there were three millions of this fund paid into the Treasury of the United States, which the Senators and Representatives of California in Congress sought in vain for years to have returned, claiming that it belonged to the State and not to the Federal Government.

Mr. WARWICK. Consequently it did not belong to the State. I had occasion to examine this whole matter, while I was in the Legislature of the State of California, and to show the Convention something of the nature of the extravagances which were perpetrated in those early times, I will mention the beginning of the State Lunatic Asylum. One poor lunatic was picked up in the streets, and ordered to be taken care of, and in the short space of a very few days there was a bill of over two thousand dollars brought in and ordered to be paid on the account of that one lunatic. That was the foundation of the State Lunatic Asylum of California, which has since cost millions. And, sir, what is this Convention as compared with the Constitutional Convention of California?

I contend that this Convention is a model in its way, at least on the score of economy. So patriotic a body as is met together here, doing its own dancing and paying for its own fiddling, I think is altogether without parallel in the history of the American Union. We come here with our own dollars, asking the State for naught, but feeding on glory, sir. What reason have we, then, to suppose that a State convention so economically, with such a model before it, will be extravagant in its expenditures? Our people are overwhelmed by the national debt, and the Territorial debt perhaps also, but they will be sustained by a patriotic Legislature and the example of a patriotic Convention like the present, and I look forward hopefully to the future, when all the offices will be filled by patriotic gentlemen, when judges will pay their own salaries out of their own pockets, and administer justice free, gratis, for nothing. I do not believe the patriotism of Nevada is confined exclusively to this little body, but I believe that others will come up to the task and accept of no more compensation than is absolutely requisite, and thus the administration of the affairs of our State will be one of the most economical administrations in the world.

But to return to serious matters. This provision states simply that the State may assist any railroad enterprise to an extent not exceeding three millions of dollars, when and where she will, but not until she possesses the means so to do. That is the proposition. When our means are doubled, when the present hard times are passed away, when the clouds now hanging over us shall give place to sunshine, and our empty pockets grow plethoric with gold, then we say to the people "If you feel that you have the ability, and your necessities require it, we will not bind you to assist any particular road, but you may, within your own borders or out of them, assist any railroad enterprise which you may see fit to aid." I sincerely hope that this amendment, or one substantially like it, may prevail.

Mr. LOCKWOOD. I desire to say a few words on this subject, and I will premise what remarks I have to offer by saying that did I consult my own feelings I should certainly support the measure which has been so ably advocated here, and which gentlemen seem to take so much to heart. But, sir, convictions of duty, and the sentiments and opinions I entertain upon all these propositions forbid my voting in the affirmative upon any of them, and I desire to be as brief as possible in stating my reasons.

The question of internal improvements, carried on by the General or State Government, is not a new question. It is a question that has been made one of the most prominent issues in every political campaign since the days of Andrew Jackson. It is a question that has been decided upon, after having been thoroughly canvassed by the American people, certainly since the days of my boyhood. I conceive that the proposition has been settled, and that it has been finally determined upon, in American politics, that it is not politic to lend State aid to internal improvements. I believe, sir, that one of the main issues upon which three or four of our latest Presidents of the United States have been elected has been this very question of internal improvements. I ask gentlemen to cite to me the number of instances where such a policy has furthered the object which was attempted to be furthered by it, or where it has advanced the object attempted to be advanced. And where they can point me to one single instance of the kind, I can point them to hundreds of instances where such a course of policy has been disastrous in its results. Look for instance at the State of California, at the present time! El Dorado County, the county with whose affairs I was more intimately connected, prior to my immigration into this Territory, is groaning under a load of debt which there is no probability of her liquidating, I might say, for at least a hundred years to come. And why?

Mr. HAWLEY. Will the gentleman allow me to interrupt him a moment? Does he know the present price of El Dorado County scrip? Is it not worth a higher price to-day than that of any other county in the State of California?

Mr. LOCKWOOD. I will state this—and I hope this will be the last interruption, for although others may not object to interruptions, I deprecate them for the reason that they destroy the thread of thought; not that I suppose however that that was the gentleman's object—I will state, that I served on a jury there, just before I left the county, and I received three dollars a day in scrip, but it lacked a good deal of paying my board. Just what I sold it for, however, I cannot say.

Sir, the question of granting public aid to internal improvements has been decided upon in almost every political canvass in our country, and it has been negatived. I presume no gentleman will deny that fact. I was going to speak of a law passed by the Legislature of California, which allowed the counties of El Dorado, Sacramento, and I believe some other counties, to vote for or against a proposition to aid in constructing a wagon road over the mountains. There was a great deal of opposition to that measure; in fact, almost everybody seemed to be opposed to it, but through the influences brought to bear by that monopoly the measure was passed triumphantly through, although it was against the best sense and judgment of business men in that community. Although seemingly there was a majority against it, yet the influences brought to bear were such as carried it triumphantly through. I ask if that is not the history of all such appropriations? Judging the future by the past, I say it becomes us to learn the lessons of wisdom from experience, and I ask this Convention whether, with an appropriation of three millions of dollars to back them, they do not think that any con-

portation of this kind can carry the measure through the Legislature, let the consequences be what they will?

I will say further that I do not believe any appropriation of this kind would further the object desired. I really do not believe it, and I think if I had time, and if this Convention were disposed to listen to me, I could prove that proposition to a demonstration. But I will merely make the point, and allow any gentleman to successfully controvert it if he can.

Now, sir, I am in favor of the Pacific Railroad, and if I believed that either one of the measures proposed here was bound to pass, I should certainly favor the one proposed by the representative from Lander, (Mr. Warwick.) Because I believe that the Pacific Railroad is a great national work. I believe that it not only appeals to our interests but also to our patriotism as American citizens, and, sir, if anything can be done to further the prosperity and enhance the growth and development of this people, it is to connect our State with the ocean, to give us access to a seaport. Then we shall have the commerce of the world at our command. But I am opposed as I am to aiding the construction of any road—either the road from Virginia City to the mountains, or any other road, to be built elsewhere, unless the people are interested, in every other portion of the Territory. For a moment let us look at this subject in that point of view. How much are the people of Esmeralda County interested? They are to come up and help to pay the taxes; they are to help, to the extent of their full share, to bear the burdens of the State; but how much are they interested in such a railroad enterprise? And how much are the people of Lander or Humboldt interested in a project of this kind? Can the representatives from those counties go before their constituents and tell them that they have voted for a proposition which is only going to enhance the value of property in the immediate vicinity of Ormsby, Storey, and Washoe counties, and no other, and that they voted for such an appropriation, fully understanding that the people of Lander County, and the people of Humboldt County, and the people of Esmeralda County, were bound to help pay it? I do insist, as I have stated heretofore, and I have made I think an accurate calculation, that even if the property in this Territory should reach the amount named in the amendment suggested by the gentleman from Lander, (Mr. Warwick,)—even when it reaches fifty millions, we must still be subjected to a tax of about four times as much as we are paying at the present time, if we vote to grant these three millions of dollars.

Sir, I call upon the representatives of the mining interests here—those who claim to be the representatives more particularly and especially of that interest—to deal justly in this matter, now that they have decided in this Convention that the mines are not to be taxed. For we have virtually decided here that the mines shall not be taxed, by declaring that only the proceeds shall be taxed, because last year, as we all know, under a law of a similar character, only five hundred dollars was collected from the mines, and that was paid out for attorney's fees, in trying to collect more. I think I can safely venture to say that under the provision as it now stands not a single dollar will ever be collected from the mines. Now, sir, I say to the representatives of the mining interest, inasmuch as you have incorporated this provision into our fundamental law, I call upon you to make the burdens as light as possible upon those who will have to bear them.

It is proposed here that this State shall give three millions of dollars for railroad enterprises. I would not object so much, or so strongly to that proposition, provided it were at all commensurate with our means, and our relative interest. But what does the State of California give? That is a State whose great and magnificent resources challenge the admiration of every other State, and of the whole world—the great State of California! She certainly has an equal interest with us in this important work, and more so, because it is claimed that one of the great objects of the Pacific Railroad is that the Pacific coast may be protected against foreign invasion. I claim that California has more than double the amount of interest in this work that we have, and yet that great State only proposes—and I say she is magnanimous in making even that proposition—to give a million and a half of dollars.

Mr. WARWICK. I suppose the gentleman does not wish to misstate the facts and therefore I will ask leave to correct him. Now, I candidly admit that there is a great deal of difference between a State and the people of a State, but nevertheless the people go to make up the State, do they not?

Mr. LOCKWOOD. Yes, sir.

Mr. WARWICK. Well, sir, the people of the State of California have contributed to the Pacific Railroad as follows: In San Francisco six hundred thousand dollars, or a million altogether for railroad purposes; in the city and county of Sacramento three hundred thousand dollars; in the county of Placerville about the same amount. And taking all these together, with the amount paid by the State of California, the total amount of the contribution paid by California towards the Pacific Railroad is something over three millions of dollars.

Mr. LOCKWOOD. But these appropriations were made by the different counties that are more immediately interested in the construction of the work—not as a national measure, nor as a State measure, but as a measure in which they were more immediately and locally interested. And no sooner, sir, was that appropriation sought to be obtained in the city and county of San Francisco, than they began to use every legal means to avoid its payment. They have got sick of their bargain already.

Mr. WARWICK. Will the gentleman allow me to ask him a question?

Mr. LOCKWOOD. I hope the gentleman will not interrupt me further.

Mr. BANES. I wish to say one word; and that is that the gentleman is entirely mistaken as to the people of San Francisco repudiating or repealing any bargain of the kind.

Mr. LOCKWOOD. Well, the Board of Supervisors then—they are the agents of the people.

Mr. WARWICK, [in his seat.] No, sir; only Supervisor McCombs.

Mr. LOCKWOOD. But they tell us that we distrust the people. Now, sir, under a republican form of government I claim, and admit, that all power is in the people; but whenever the people delegate their power, we look to the persons to whom such power is delegated as the representatives of the people. Now I ask, gentlemen, if the object of a fundamental law is not to mark out and define, by plain and legible land-marks, the sources and boundaries of future legislation? We have been called by the people to assemble together here, if I understand correctly my position as a delegate in this Convention, to see if the people will be willing to go into a State organization and form a State government, under certain restrictions. Those restrictions are that the Legislature, in legislating upon this or that subject, shall be allowed to go so far and no farther. Why is it that those gentlemen who now throw this charge of unwillingness to trust the people in our laws, have said that the Legislature shall not tax mines and mining claims? Why did they not leave that to the people, to whom those gentlemen now seem to look for their relief? Why not trust to their intelligence and their judgment upon that question? Why did those gentlemen say, in another provision of the Constitution, that after the State debt shall have reached a certain specified amount, no debt shall be incurred beyond that amount, and that any appropriation that may be made beyond that will be null and void?

These are constitutional restrictions, and we are not arrogating to ourselves that power or that wisdom which we do not possess by establishing them, because this instrument is to be submitted to the people after our final action upon it, and they will decide whether it shall be the fundamental law of the new State or not. I do claim that in taking such action we are not arrogating to ourselves any superior wisdom, or saying that wisdom will die with this body. We have said that the Legislature shall provide for the segregation of the homestead; we have said that the Legislature shall do this and that, and that the Legislature shall not do this or that; and I claim that it is perfectly consistent for this body to restrict the Legislature in like manner, in regard to appropriations for internal improvements.

But I place my objection upon the basis that we are unable to give three millions of dollars, or anything like it, to a railroad—that, in a business point of view, for we ought to look at it like business men, when the Territory is groaning under the burden of taxation, when ninety-five thousand dollars only per annum are collected of Territorial taxes—if they propose to saddle upon us even the interest, amounting to two hundred and ten thousand dollars a year, we cannot endure it, and ought not to undertake it. Is that business like? Would any business man attempt to proceed on a basis like that? No. Now if the vote to be taken here were only to say that we are in favor of any measure, consistent with the public welfare, which is calculated to aid this great national work, I would vote "aye" so loud that you could hear me all over town. If it were merely a resolution that it is the sense of this body that we are in favor of doing all in our power for the construction of this great work, I would vote "aye;" but while I would do that, I claim that we are really not able as a State to give anything. It has been the study of every member of the Convention to proceed upon such an economical basis, in establishing our State Government, that the revenues may be equal to the expenditures. And, sir, that has been the most difficult problem to solve—the most difficult one that has been or can be presented to the Convention.

The PRESIDENT. The hour for adjournment has arrived.

RIGHT OF SUFFRAGE.

Mr. DELONG. Before the Convention adjourns I would like to make a report; it will not take a moment.

The PRESIDENT. The report will be received, if there is no objection.

Mr. DELONG, from the Special Committee to whom was referred Article II, entitled Right of Suffrage, presented the following report:

The Special Committee to whom was referred Article II of the Constitution, entitled "Right of Suffrage," beg leave to report the same back, and recommend the following amendments:

Amend Section 4 by striking out the words "should from this State," occurring in the third line of said section. Also, amend the amendments heretofore made to that section, by striking out all after the word "cast" in the first line, to and including the word "officers" in the second line. Also, amend Section 5 by striking out the proviso added thereto.

C. E. DeLong, Chairman.

The report having been read,

The PRESIDENT, at 12 o'clock, declared the Convention at recess until 2 o'clock, P. M.

AFTERNOON SESSION.

The Convention met at two o'clock, P. M., and was called to order by the President.

RIGHT OF SUFFRAGE.

Mr. DELONG. I ask of the Convention a suspension of the rules, which will not occupy

a moment, in order to take from the file Article II, entitled Right of Suffrage, which was reported from the special committee just before recess, for the purpose of placing it on its final passage. The Enrolling Committee have enrolled up to Article II, and unless that is acted upon, so as to give the Enrolling Clerk work, we may have to wait a day or two after we get through our work, to enable him to catch up.

The PRESIDENT. For my own satisfaction I should prefer that the report should not now be taken up, as I would like to examine it during the afternoon.

Mr. DuLONG. I was going to explain the amendment, by the leave of the Convention, and it will take but a very few words.

The first amendment is to Section 4. It reads now in the section in this way—"The right of suffrage shall be enjoyed by all persons otherwise entitled to the same, who may be absent from this State in the military or naval service of the United States," etc. Your committee deemed that the words "absent from this State" would be construed to imply that persons in the military or naval service of the United States, in this State, should not be permitted to exercise the elective franchise, and consequently they have recommended the striking out of the words "absent from this State," so as to read "The right of suffrage shall be enjoyed by all persons otherwise entitled to the same who may be in the military or naval service of the United States," etc. Then if any man is in the military or naval service, whether in the State or out of it, he will be entitled to the elective franchise.

The next amendment is an amendment to the amendment adopted on motion of the gentleman from Lyon (Mr. Crossman.) It reads now, "Provided, the votes so cast for officers of a lower grade than State officers shall be made to apply to the county and township of which said voters were *bona fide* residents at the time of their enlistment." The committee recommend the striking out of the words "for officers of a lower grade than State officers," so that it will read, "Provided the votes so cast shall be made to apply to the county and township of which said voters were *bona fide* residents at the time of their enlistment." It was thought that the vote of the soldier should properly be made to apply as well to State officers as to county officers.

The third amendment was to strike out the proviso relative to the oath, leaving the matter in the hands of the Legislature, to prescribe such rules, regulations and restrictions as they may deem proper, as a condition to the right of voters to have their names registered. These are the only amendments recommended by the committee.

The PRESIDENT. So far as I am concerned, my only desire was to have an opportunity for further examination of these amendments.

The question was taken on the motion to suspend the rules, and it was agreed to.

The SECRETARY read the several amendments proposed by the committee.

[Mr. COLLINS in the Chair.]

Mr. JOHNSON. I do not desire to delay the action of the Convention in relation to this matter, but I am not at the present time prepared to vote with a proper understanding of the effect of striking out this test oath. The laws now in force in this Territory will doubtless be continued in force until they are repealed or other provision is made upon the same subject, and furthermore, the laws in reference to elections, under our existing organization, will undoubtedly be applicable to until other laws are enacted to supersede them. I am satisfied of that; but as to a further proposition, namely, in regard to the question whether or not, under this provision, the Legislature would have power to incorporate into a law regulating elections any test oath, I am not prepared to come to any conclusion at the present time.

I have had occasion heretofore to present my views on the subject of a test oath, to the Convention. While I was earnestly desirous of striking out this test oath, in the relation which it then occupied in the Constitution, requiring the voter to take the oath at the time he proposed to cast his ballot—whilst I was opposed to that for reasons which were satisfactory to my own mind, (and I have had no occasion since to change my views in that respect,) on account of the impracticability, and the probability of delays, which might prevent many persons from exercising the elective franchise—yet I thought such a provision, requiring a test oath to be administered, should be incorporated somewhere in the Constitution, and that the most appropriate method was to give this power to the registrar to administer this oath only in cases where the person might be challenged on the score of disloyalty. I am apprehensive that the effect of this proposed amendment will be a denial of any power to the Legislature to make any provision for a test oath, whilst in my judgment, such an oath, in its proper place, is necessary.

I hope this matter will not now be acted on, but that we shall be allowed a further opportunity to examine it. I am willing to go as far as the farthest of those who favor a test oath of this character, but at the same time I am not prepared to say now, as I said before, what the effect would be, and I am unwilling to place this matter in such a position that the Legislature might possibly be inhibited, if it were deemed proper or advisable to perpetuate a law similar in its character to that which we now have on our Territorial statute books. I do not charge that it is the intention, nor do I think it is the intention of my friend from Storey (Mr. DuLong) to prevent the Legislature from exercising that power.

Mr. DuLONG. On the contrary, the committee think it does not. We have had the subject under consideration for some time, and we

here all come to the conclusion that it does not. Nevertheless it is possible that the gentleman's views may be correct.

Mr. JOHNSON. I am satisfied that the gentleman does not desire to forbid the Legislature from exercising this power, and I certainly do not; but for fear that it may be so inhibited, and in order that we may have an opportunity of investigating the subject a little more thoroughly, I trust that the matter may be laid over for the present time. My impression, from the hasty examination I have given to the amendment is, that by its adoption the Legislature would have no authority to enact such a law, and therefore I hope the gentleman will withdraw his motion and give us further time to examine the amendment. It may be that after such examination, I will, for one, concur in its adoption.

Mr. DeLONG. If we have got to discuss this matter, we may as well discuss it now as at any time. The committee drew up the report after careful consideration, and fully believing that the section as it stands would give the Legislature full power, whenever they see fit, to incorporate that test oath. A number of propositions were advanced in the committee, and the committee unanimously came to the conclusion, as did every other gentleman in the room at the time, that the Legislature would have full power, with this amendment, to impose as a condition of registration, any condition it might see proper to specify.

Mr. WARWICK. I call for the reading of the section as it will be if amended.

The SECRETARY read as follows:

SEC. 7. Provision shall be made by law for the registration of the names of the electors within the counties in which they may be residents, and for the ascertainment by proper proofs of the persons who shall be entitled to the right of suffrage as hereby established, to secure the purity of elections, and to regulate the manner of holding and making returns of the same.

Mr. WARWICK. I am really inclined to entertain the same doubt that occupies the mind of the gentleman from Ormsby, (Mr. Johnson.) That is the way it strikes me at present. I really cannot, from merely hearing that amendment read, judge what the ultimate effect would be, or how far the Legislature would be justified and sustained by it, in providing a test oath. If an assurance can be given which will satisfy my mind that in this amendment there is no sacrifice of principle, I shall be willing to support it. I do not wish to occupy the time of the Convention at this moment, in the further consideration of the subject, but if the gentleman from Storey will withdraw his motion and allow the matter to remain for the present, until we can have a little further consideration of it, I may possibly be in favor of supporting this amendment; otherwise, with the light before me at the present moment, I am not sure but I shall be opposed to it.

Mr. JOHNSON. There is one proposition which I will suggest as incontrovertible, and that is, that when certain qualifications of voters are prescribed in the Constitution, unless there be an express reservation, giving to the Legislature power for the imposition of additional restraints or qualifications, it is beyond the power of the Legislature to prescribe any other or further conditions or restrictions.

Mr. BROSNAN. I will suggest that the Supreme Court of California have held that a new oath prescribed by the Legislature for persons obtaining office or holding office to which they are nominated or appointed, although different from the oath laid down in the Constitution, was nevertheless constitutional. In the Constitution of California there is a test oath provided—an oath for every one holding office in the State—and the Constitution says that this shall be the only test oath required; nevertheless, the Legislature devised and enacted another oath, different from the one which all officers under that State Government had been required to subscribe to, and some parties raised a question upon it, maintaining that the law was unconstitutional, because it prescribed an oath other than the constitutional oath of office; and recently the case went to the Supreme Court of that State, and that tribunal held that the Legislature was competent to prescribe such an oath, notwithstanding the restriction in the Constitution that no other test oath would be required.

Mr. DeLONG. We have no such restriction here.

Mr. JOHNSON. I think the gentleman from Storey must be mistaken as regards such a decision.

Mr. BROSNAN. The case I refer to is that of the People *ex rel.* Highton, the respondent having refused to take the oath prescribed for attorneys and counsellors-at-law, in San Francisco.

Mr. JOHNSON. I think the gentleman will find that to be entirely a different case. The oath there prescribed refers to an office not known, recognized, or even suggested in the Constitution of that State. I will say, however, that with the limited understanding I have of the amendment, derived from a hasty examination, I am now prepared to discuss it, either in its constitutional or legal bearings, or perhaps as a question of expediency, and we should endeavor, by all means, to avoid any hasty, and possibly inconsiderate action on such a matter.

I was proceeding to remark, before the explanation was made by the gentleman from Storey (Mr. Brosnan) as to the nature of the case to which he referred, that I recollected no such decision of the Supreme Court of California, and if that court ever rendered such a decision, while I have a higher appreciation of the decisions of the Supreme Court of California than some gentlemen here, or at least one who has alluded to the decisions of that tribunal, at the same time whoever might have been responsible for such a ruling, I will take upon myself the responsibility of saying that I can point to decisions of the courts of nine

out of her Senate where the adverse position has been held. It is absurd to say that when a form of oath has been prescribed in a State Constitution, and by express language, declaring that no other or further test shall be required, a Court may yet give a judicial construction, notwithstanding those inhibitory words, to the effect that the Legislature may add to or subtract from that prescribed form of oath. It is a proposition altogether untenable, and it amounts only to this, that if the Supreme Court of California ever made such a decision, it acted most glaringly, and is not supported by the decisions of the courts of any other State.

But light has been shed upon the subject by the explanation of the gentleman from Storey, that the oath in only that in relation to attorneys and counsellors-at-law, for no form of oath for them is prescribed in the Constitution. That subject is therefore left for the wisdom of the Legislature, in the exercise of its legitimate power, while the form of the oath for the officers of the State, under the Constitution, is prescribed and fixed. Therefore I take it that this is not a case in point. To use a familiar legal phrase, it has "no applicability to the question at bar."

Upon referring to this provision of the California Constitution, it will be seen that it expressly specifies, in the language of the section itself, what it refers to. It defines what it means, and therefore defining what it does mean—specifying those officers to whom it does apply—the conclusion is, by a familiar rule of legal interpretation, that it excludes all others from its operation, and therefore, in respect to other officers, the power would necessarily devolve upon the Legislature to regulate the matter. But the difficulty here is that when we prescribe a form of oath for executive, judicial, legislative, and all civil officers, it is not within the scope of legislative power to add to, or subtract from the form of that oath, or to make any change or addition to it. I repeat, as a legal proposition, which cannot, be successfully refuted, that the Legislature can have no such authority. This is the provision of the California Constitution:

"Section 3. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: 'I do solemnly swear, (or affirm, as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ——— according to the best of my ability.' And no other oath, declaration, or test, shall be required as a qualification for any office or public trust."

Mr. DeLONG. That is just the language of our own Constitution, relative to men who are elected or appointed to office. There is no oath prescribed in the Constitution, however, in reference to what shall constitute the qualifications of a voter; and what point is there, then, in the argument that the Legislature may not prescribe any other oath? There is an established oath for office-holders, but none prescribed for voters, and therefore we leave the Legislature full power to provide any other means they please, even to the examination of witnesses, if they deem it proper, to test the question whether or not a man is qualified to vote.

Mr. BRENAN. I think I did not state my proposition in relation to the ruling of the Supreme Court of California in the case to which I referred, so as to be clearly understood. That was not, as I understand it, an oath to be taken upon the admission of a lawyer to the bar, but it was an oath required to be administered to him, and which in this case he had refused to take, in the prosecution of a suit, he having been previously admitted to the bar. The Legislature had provided by law that any person refusing to take that oath should not be permitted to defend or prosecute a suit. Mr. Gregory Yale contested the law at one time on the same point of constitutionality, but afterward he took the oath. The argument against the law, as I understand it, was this, that an attorney-at-law is a judicial officer, and therefore not compellable to take any oath save that prescribed for judicial officers in the Constitution. The decision of the Supreme Court I understand to have been that an officer of a court is *ex vi termini*, a judicial officer, coming within the category of judicial officers, and discharging the duties of his office as such, and that attorneys being in that category must take the oath. It is not disputed that he is a judicial officer under the section of the Constitution which the gentleman from Ormsby has read. The ground of objection being that he should not be required to take an extra oath, and that its requirement was in contravention of that section which prescribes the oath to be taken by all judicial officers, and that attorneys therefore need not take any oath, except the one prescribed in the Constitution itself, the Supreme Court ruled to the contrary. Hence I said that in my judgment, and I based it on the decision of the Supreme Court of that State, I apprehended that there was no legal force in the suggestion of the gentleman from Ormsby.

Mr. JOHNSON. I am constrained to fall back upon my original suggestion, that it is a proposition of law sustained by not a single respectable court, save that of California; and for such a ruling I have no respect, even though it emanates from men possessing the legal learning, and undoubted professional reputation, which distinguishes the judges who constitute that Supreme Court Bench. Now, sir, I regret exceedingly that I am forced to take that position. I know full well that those judges occupy a much higher grade in professional repute than I do, but, sir, I do not retract what I have said, and I am willing to be placed on the record as dissenting from such a decision. I think, however, that my friend from Storey, (Mr. Brennan,) must be mistaken as to the extent and scope of the interpretation given to that section of the California Constitution by

the Supreme Court, for I cannot conceive that it is possible for gentlemen who occupy an exalted a position as that of members of the highest appellate court of the State of California, ever to nullify, by their decisions, the plain, unmistakable language of the State Constitution—language which, as I understand it, is susceptible of but one construction.

But the other gentleman from Stanislaus (Mr. DuLong) says there is no point in these objections, because we have not provided a test oath in this case. Here is the very point involved. If we have never provided such an oath, if we now strike it out a query is suggested to my mind whether the Legislature would have the power to establish it. It is just here where the doubt is suggested. Now, I do not desire to discuss the matter at this time, and have asked for a postponement, because, with my present understanding, I should be compelled to vote against this amendment, whereas, having afforded an opportunity for investigation, I might coincide with the views of the gentleman from Stanislaus. It is for the reason that I doubt the power of the Legislature, and fear that by force of other provisions, it would be beyond its power to prescribe an additional test oath, or any test oath whatever, if we strike this out, that I desire further time for consideration.

I repeat that from the reading here, and the limited time I have been able to give to examining the article and the amendatory sections, I at least fear that this power will be placed beyond the scope of legislation. I understand that the gentleman from Stanislaus (Mr. DuLong) does not wish to prevent the widest legal test power of the Legislature, but on the contrary desires that the Legislature may have full power in the premises. I concur with him to the last, at the same time I do not want, to use a vulgar expression, to "go it blind." I do not want to take such an action as perhaps may place it beyond legislative control. The laws of the Medbury will, I suppose, be continued in force until they are repealed, but can be operative only so far as they are not inhibited by the Constitution.

Mr. DuLONG. Why not offer an amendment to the section, rather than vote it down? If the gentleman is afraid of it, I will offer an amendment to meet his objection.

Mr. JOHNSON. I hope the Convention will bear with me one moment further. Gentlemen will bear witness that I have expressed no fear. I only say that I think the section would not confer that power on the Legislature, and I agree with the gentleman from Stanislaus in desiring to give the Legislature that power.

Mr. DuLONG. I have only to say in reply, that seven twenty or seventy-five members of the Convention agree that the provision does give that power to the Legislature. If the gentleman from Ormsby thinks it does not, let him offer an amendment.

Mr. JOHNSON. I do not know that I would recognize the right of the gentleman from Stanislaus to speak for twenty or twenty-five members.

Mr. DuLONG. I will read what I proposed to offer for an amendment, to meet the gentleman's views.

Mr. JOHNSON. The gentleman will pardon me; when I want to offer an amendment, I think, with all respect, I can find the language which will express my wishes. But here, upon the eve of the motion, I say I do not desire to discuss the legality or the illegality of the proposition. I do not want to hurry, vote on or with a question. I have repeatedly explained that I am not prepared now to say whether it is correct, or incorrect, but I fear it is not proper, and with a view of further considering it I have asked the postponement.

Mr. DuLONG. I ask again does the gentleman fear that it does not give the power to the Legislature which we think it does give? If so, will it take long to remedy it? If the gentleman thinks it must take two sessions to pursue an amendment to my have that the Legislature may prescribe any other oath, or any, preceding any oath. Let the gentleman offer the amendment he wishes, and it will be supported, I have no doubt. But in order to facilitate the business of the Convention, in order to have the Enrolling Clerk go on and keep this article moving up, so that we may be able to adjourn at as early an hour as possible, I desire to dispose of this question now.

Mr. JOHNSON. I am informed by the Secretary that there is ample business to occupy the Enrolling Clerk at work until Saturday, so that argument is without foundation. As to the other matter, of an amendment, I want to embody no compliments in this Constitution. If it is found that this section has already vested the power we desire in the Legislature, I am content to agree with the gentleman in supporting it. For myself—and I am speaking for myself alone, and not for twenty-five or forty members of the Convention—I say if it does give the Legislature that power, I shall ask for an amendment; but, on the contrary, if it does not, I shall undoubtedly be compelled to present an amendment conferring that power.

Mr. EARL. These questions on hour have now been commenced by arguing this question. I presume we have all made up our minds, and I hope the Convention will not be detained longer in argument. I call for the question. ("Question! question!")

Mr. WARWICK. There is no time when I have risen to address this Convention that I have felt so deeply upon the subject pending as I now feel. What I am about to say may possibly be wrong, but, sir, I feel my heart almost sink within me. I have sat, while sitting here and listening to the speech of the gentleman from Ormsby, (Mr. Johnson,) to refrain if possible from speaking on this question; but, to me, it assumes an importance which no other question has, and whatever may be the result to me, I cannot remain away from the

desire to, from giving breath and utterance to the feelings which sway me. I fear that, in the amendments here proposed, I see a concession to those to whom we have no right to concede, a pandering toward an interest to which we have no right to pander; a looking for aid from those from whom we have no right to expect aid. I fear we are asking from our enemies, and from this enemies of our government, assistance which we ought to be ashamed to take. That is what I fear, sir. I fear to go back to my constituents and tell them that when this question came up, and when the outside pressure was brought to bear in regard to the success of our Constitution, although feeling that I was right, I was afraid to stand up for the right, lest the Constitution should sink and I should sink with it, but rather sought to pander to the wrong, as one of the elements of success. If I could resist the gentleman from Storey, I would resist him, but I cannot.

When I was preparing to leave my home on the eastern border of our Territory to come to this Convention, an old man, one of the most respectable of my constituents, approached me and said: "Be sure of that test oath!" And again, just as I was about leaving, he came to me and said: "Do not forget the test oath!" And why? Because, sir, the importance of that measure impressed itself upon his mind. As I pressed his hand, I said: "You can rely upon me"—and so he can, to the last. What is the reason that at this time, after we have had a full and mature consideration of two or three days upon this very question, this amendment is sought to be incorporated here? I ask if it is not on account of the outside pressure which has been brought to bear? Is it not on account of the promises of assistance which we have no right to look for, and which we should spurn—aye, spurn!—if it were offered to us?

I have never in my life consented to sacrifice principle to expediency, but that I have subsequently had occasion to regret it. Trust to expediency and see where it will lead us. Under despotism it has hurried the purest, the bravest, and the noblest to the scaffold and the dungeon. But high over expediency rise justice, right, and truth. High over it rises another principle, that rests in the heart of the statesman who cherishes there only the good, the sole good, of his country. We are now at a point that requires something more than the ordinary attention and interest of the Convention. I fear we are—I regret to say the word—about to pander to an interest that every member who hears me may regret to the last of his life ever having sought to conciliate. Rather perish and die, I say, than live by means which we should ever after reprobate. Why, sir, suppose the success of this great issue before us were trembling in the balance, and the assistance we could borrow from this source might insure its success, how much would we have to congratulate ourselves upon in after time? Place it in whatever light you will, it is that interest which is hostile to our government which we are seeking to conciliate, for the purpose of carrying this Constitution before the people. That is it. We are seeking the aid of an unworthy interest, in order to secure the passage of this instrument. Than it should pass by such unworthy aid, I would rather see it sink—aye, sink forever—even though I were to perish beneath its ruins. Having once made up his mind to the path of right, the man who sways from that path, to the right or the left, though it be only for an instant, has taken the first false step which will ultimately secure, I fear, not only his political but his eternal damnation. I tell you, Mr. President, that this question, let it be sought to be covered up and hidden by as nice an arrangement of words as you please, is the most important question that has yet come before this Convention.

Mr. CHAPIN, [in his seat.] Except the railroad question.

Mr. WARWICK. No, sir; let the railroad and all other interests be annihilated rather than this thing should be done. It is not a question of a railroad; it is not a question of internal improvements; but it is a question of eternal rights. It is a question of principle, of a principle that was living before the railroad was thought of, and which shall live till the last railroad on earth shall be annihilated. I look upon that question of a railroad as altogether unimportant, in comparison. This question does not occupy the same status that it did the other day. It comes up under a different phase. We have made up our decision upon it already, and have said that such and such a test shall be incorporated into the Constitution, and why? Because we then considered it right. But since then has any pressure been brought to bear upon the Convention? Have gentlemen thought the Constitution would not be sustained by so large a number of the elements of strength as would support it if this amendment were made? What element do they expect to secure? It is the evil element of disloyalty, which we are here to oppose. It is the element which is now arrayed against the government and seeking its overthrow. It is the element against which the hand of every loyal man is, and should be raised. We have been seeking its life, as it has been seeking for ours, and not ours alone, but, above all, the national life, the great heritage which we are to hand down to our children, and our children's children, so long as the republic shall last, as long as the earth shall endure.

This is a question of right, sir, which arises not merely in political conventions, but which takes its birth with the life of man, and survives his decay. Can we afford to sway a little to the right, or to the left, for the sake of expediency? The gentleman from Storey thinks we can. He thinks if we strike out this test we shall receive the aid of a certain element in this community which will be arrayed against us if we incorporate it into our Constitution. Sir, does that

but give offence to any loyal man? Does it give pain to the heart of any loyal man who strikes for the welfare of his country? Does any true patriot shrink from that test? I venture to say, not one. It was a question of expediency, the other day, as to whether the oath should be applied to everybody, simply because it did not seem to be absolutely necessary that loyal men should be put to the trouble of taking the oath; but the Convention in its wisdom decided that it should be applied to all alike, in order to make the provision as little odious as possible when the amnesty shall come—in order that no man should feel that he was thrust out of the pale of forgiveness. Notwithstanding that his great sin is written in indelible scarlet letters upon the folds of his garments, still the Angel of Mercy may unfold her broad wings to encompass all, even traitors of the darkest dye. For that reason we said to them—"We insist upon no test for you which we are not willing to take ourselves. We impose no test, to which any man who loves his country will not willingly and freely submit." In order to remove the sting and barb as far as possible; that it may not rankle in the hearts of those men and recall the memory of the evil deeds they have committed, we said—"We will submit to the same test which we propose to you." That was a wise and merciful provision, and an honor to the gentleman who first proposed to incorporate it in this article. But now, when we have made our election, when by the vote of a large majority that oath is placed in our Constitution, it is sought to be removed thence, for the sake of securing the support of those men who are arrayed against the Government. Our Government needs no such aid.

Sir, we were called together here for the high and noble purpose of assisting to remove a great blot existing upon the escutcheon of the United States—for the purpose of enabling the United States of America to stand before the world as the great home of American Freedom, as the home of the oppressed of every land, of the down-trodden of every clime. This is not a question of party. High above parties and factions is the glorious American Union. The names which have distinguished the divisions of political parties shall perish and be forgotten; the names even of those who have been honored by them shall be forever ignored; the smoke shall pass away from the hundreds of battle fields, and the grass grow green again over the graves of the slain; the thunders of battle shall give place to the peaceful hum of industry; the mournful relics of those who have given their lives for their country shall rest in green and peaceful meads, and waving grass and blooming flowers of returning spring shall tenderly as a canopy above them; and even when almost the memory of this desolating strife shall have passed away, still this Union shall live and endure for countless generations. But, sir, if the Union is to live and endure, it will not be because questions of expediency have risen superior over questions of right. I tell you, sir, that even this little amendment, worded so carefully, covered up so nicely that it seems to signify nothing, has a great and important significance. It has a meaning which I, for one, am not willing to go back to my constituents and defend.

I did not intend when I sat down the last time to speak upon this question again, but when the gentleman from Ormsby (Mr. Johnson) had used every conceivable argument apparently in vain, in endeavoring to secure an opportunity for investigating the subject, it impressed me so powerfully that I could not sit here in silence and see this matter passed upon by the Convention without entering my protest against it, without raising my voice and saying, "Gentlemen, pass it if you will, but I am the bitter enemy of that compromise, now and forever." That is the way I feel on this subject. It may be carried by this Convention, and the gentleman from Storey says, if I understand him correctly, that some twenty or more members have agreed to support it.

Mr. DeLONG. Oh no, sir; I said simply that as many as twenty or more members considered that that section, as it is proposed here to be amended, would give the Legislature power to impose any oath they pleased.

Mr. WARWICK. Then I will withdraw that. It appears, then, that eighteen or twenty members of this Convention differ from me. I very much regret it. They are gentlemen whose wisdom I would acknowledge, gentlemen whose venerable aspect, and experience, and judgment justly entitle them to honor and respect and deference, while I am but an humble individual. Could I follow in their pathway most willingly would I do it, but feeling as I do that no question of so much moment has ever before been raised in the Convention, feeling that the question of expediency is seeking to override the question of right, I say again, most solemnly, that I cannot go with you. I wash my hands of the measure. Adopt it if you will, but I am its enemy, now and forever.

Mr. HAINES. I had intended to keep my seat and say nothing on this subject, but on more careful reflection I have concluded that I cannot do justice to myself and to my constituents, without offering a few remarks in addition to those which have been submitted by gentlemen more able than I am to present the subject in a clear light.

Only a few days ago we had this question under discussion, and it was then very fully and ably discussed, and the section in its present form was adopted by quite a large majority. Many of the gentlemen then voting in the affirmative, expressed themselves anxious to have the oath incorporated; they were not merely desirous, but strenuously anxious to have it incorporated. But there seems for some reason to have been a change in the minds of gentlemen. Then the taxation clause had not been sprung upon the Convention, and gen-

Section were not fully satisfied as to the financial condition we should stand in when we should have disposed of that clause. When that question came up, and was argued at length in the Convention, we were told that certain members would withdraw from the Convention, unless a certain measure should pass—unless the taxation clause should be so modified as to exclude certain portions of the property of the State from taxation—and those gentlemen have so far succeeded, that we are deprived of the support of about three-fourths of the property of the State, in bearing the burdens of the State; we are deprived of the assistance of about three-fourths of the property of the State, in the navigation of that new ship which is about to be launched. Those gentlemen then expressed themselves satisfied, and so far from opposing the Constitution, as they had previously declared they would do, they are now very anxious that the Constitution shall be ratified by the people. They are not only anxious for it, but they are working for it in every possible way. I have no doubt they will go before their constituents and tell them—"Gentlemen, you bear no portion of the burdens of the State Government about to be inaugurated. You can well afford to vote for it, because you are not taxed and will have no portion of the burdens to bear."

Then, again, it has been said here that constancy is a jewel, but some of these very consistent gentlemen were opposed to the railroad proviso. They were opposed to advancing anything toward the construction of the Pacific Railroad, but as soon as the article on taxation was so modified as to exclude from taxation three-fourths of the property of the State, leaving the provision so vague that no two members can understand it alike—(although I am satisfied in my own mind that it was never meant to impose any tax upon the mining property of the State, and not a dollar will ever be derived from that source)—then these gentlemen suddenly become very anxious to render aid to the Pacific Railroad, and they are perfectly willing now to donate three millions of dollars to help that road over the mountains.

Mr. DeLONG. Will the gentleman name some one to whom he refers in that connection?

Mr. McCLINTOCK. I would like to have the gentleman point out a single individual.

Mr. HAINES. I do not know as it is necessary for any gentleman to take it up who is not hit; there are plenty who are hit.

Mr. McCLINTOCK. Was I in favor of the Pacific Railroad proviso before the clause in respect to taxing the mines was adopted? Or have I been since then in favor of it?

Mr. HAINES. I think it will not hit the gentleman from Esmeralda; but I believe there are many gentlemen in the Convention who view this matter just as I do. We have several members here who did oppose the Pacific Railroad clause before the taxation clause was adopted, and afterwards were in favor of it. I assign no reason for that. They have exempted a great portion of the wealth of the State from taxation—a portion which I and others have contended ought to bear its equal proportion of the burdens, either of a State Government or of any other government.

Mr. BROSNAN. I rise to a question of order. I dislike to interrupt my friend from Douglas, but he is reflecting upon the past action of the Convention, which is not in order; and besides, he is not speaking to the question before the Convention.

The PRESIDENT *pro tem.* I think the gentleman has been taking a very wide range in his remarks.

Mr. HAINES. I am only referring to one action as we pass along, but it can all be left to the remembrance of members here of the Convention, and the people I have no doubt will understand it without any trouble.

Now as to this question of taking an oath of allegiance, I do say that to my mind there is no question whatever of the propriety of obliging everybody to take an oath of that kind before being allowed to vote. If it can be shown to me that it is going to work a great hardship, or be any vital injury to the loyal voters of the new State, when it shall be organized, to oblige them to take a test oath, then I shall be prepared to say that I can vote with these gentlemen for this new proposition which they have submitted. But after carefully looking over the subject I can see no such hardship, and I shall vote against the amendment, and for the section as it stood originally. I only mentioned the past action of the Convention to show the inconsistency of some gentlemen who were in favor of this section as it stands, until after the taxation clause was adopted, and are now opposed to it, just as they changed their views when the railroad clause came up the second time, and showed themselves willing to appropriate three millions, or five millions if necessary, in aid of that work.

Mr. DUNNE. Will the gentleman allow me to ask him a question?

Mr. HAINES. I have yielded the floor, but I will answer if I can.

Mr. DUNNE. I wish to know whether the gentleman intends to convey the idea that members who had been opposed to the Constitution were now in favor of this measure for the purpose of gaining votes for the Constitution?

Mr. HAINES. I only made that as a suggestion. As it strikes me, that is the position they occupy.

Mr. DUNNE. Does he say that those who have been opposed to the Constitution are now in favor of this measure, in order to obtain votes for the Constitution?

Mr. HAINES. I do know that it was so reported, and said to have been expressed here—that unless that taxation clause was modified, certain gentlemen would withdraw from the Convention. It was so reported, and I have heard it said here several times, that it was for

taxation in essence to withdraw from the Convention if they did not succeed in that matter, relative to the taxation of the mines.

The PRESIDENT *pro tem.* This discussion is taking altogether too wide a range.

Mr. DUNNE. I am speaking to a question of privilege.

The PRESIDENT *pro tem.* The gentleman will proceed.

Mr. DUNNE. I am, I believe, the only man who came into this Convention openly opposed to the adoption of a State Constitution at this time. I offered a resolution to the effect that the Convention adjourn *sine die*, without proceeding to frame a Constitution. Now the gentleman from Douglas—

Mr. HAINES. So far as the gentleman from Humboldt is concerned, I will say that I had no reference to him whatever.

Mr. DUNNE. I am satisfied with that.

Mr. DeLONG. I have no parliamentary question or device to present. My views on this subject are simply these: This State Constitution will be inoperative of course until it shall be adopted by the people, and even then it will still continue to be inoperative until the Legislature shall meet, and pass laws to carry out the provisions of the Constitution. Until such time, then, as the Legislature shall have assembled, and passed such laws, all gentlemen must admit that any oath prescribed in our Constitution will have no effect, and no bearing whatever upon the citizens of the State. Everybody can vote just as freely, if the oath is incorporated in the Constitution as if we only empowered the Legislature to provide by statute for a test oath. The only question therefore is, is it wiser for us to incorporate that oath in the Constitution which is to operate for all time to come, looking to the future as well as to our present circumstances, or is it wiser for us to authorize the Legislature to make it a statutory requirement? That is the only question involved in this report.

Now gentlemen get up here and make declamatory speeches, arrogating to themselves all the honesty and all the patriotism in the country, claiming that no other man is actuated by conscientious or patriotic motives, but that all are governed by expediency, or by a desire to pander to some particular interest. I submit that that is hardly a correct line of argument, with which to meet a proposition like this that has been made in good faith. I believe there are other gentlemen than the gentleman from Lander (Mr. Warwick) who have come here influenced by the highest motives of patriotism. I believe the most of us have as loyal constituents as those who have informed him, and that we are as loyal as those who declaim loudest, and send the American eagle highest toward the sky. Now I say that this is the only real question before the Convention—whether this test oath should be made a Constitutional provision, or a legislative enactment? There is nothing in the question about a Public Railroad, which was suggested by the gentleman from Douglas; nothing in it about taxing the mines, and nothing in it about holding from the Convention, upon which he made another portion of his speech. I confess that I could not see the point of that argument in relation to this amendment.

Now, inasmuch as a test oath, if we have one, will operate just as quickly to prevent any disloyal man from voting, if we leave it to the Legislature to provide for it by an enactment, at the next session, as it will if we place it directly in the Constitution; as we have Territorial laws which must be enforced until modified or repealed by the State laws, and they require a challenge of the same character, on the ground of disloyalty, so that we lose no time in respect to the matter, for the Territorial law will continue until superseded by the State law, and disloyal votes will thus be shut out all the time; therefore, I say, I can see no objection whatever to this amendment, leaving the matter in the hands of the Legislature. The only question, I repeat, is whether we shall put it into the Constitution, or leave it to the Legislature to enact such laws as they deem proper, with the power of modifying or changing them from time to time, according to their existing circumstances. The passions of men may subside in time or give way to calmer reasoning, and more careful and discriminating legislation may be required.

Now what object gentlemen could have in getting up here and impugning the motives of other gentlemen by making statements of such a character as those which have been made here, I cannot tell. For one, I will say that I have concurred in this report with two other gentlemen on this floor, the gentleman from Lyon (Mr. Kennedy) and the gentleman from Esmeralda (Mr. Mason) who are on that committee, and, as I stated before, it so happened that the report being on my desk, I showed it to a number of gentlemen, and asked them if it met their views, and, as I said to the gentleman from Ormsby, (Mr. Johnston,) they all agreed with me that it would give the Legislature ample power to pass such enactments as might be desired, and therefore I had no doubt it would. And when the gentleman from Ormsby made the point that the Legislature would have no such power, I suggested that he should offer an amendment, if there was any doubt on that point, although I did not think there was any. I think the Legislature would have, under that section as we have amended it, full power to prescribe any such conditions as may be deemed fit and proper.

Mr. WARWICK. I desire to say that if I did, in the heat of a somewhat excited argument, impugn anybody's motives, more especially those of the gentleman from Storey, (Mr. DeLong,) for whom I have the highest regard, I certainly sincerely regret it. I think I said that I feared there was a desire to conciliate a certain interest, and if I did not give that qualifi-

cation to my remarks, at least I intended to. I certainly should regret having impugned the motives of any gentleman in the Convention.

Mr. JOHNSON. I am sure the gentleman from Storey did not address his remarks to me.

Mr. DuLONG. No, sir; my remarks were intended to apply to the gentleman from Lander (Mr. Warwick) alone, and I meant to say before I sat down, that although in the heat of argument he may have said what he did not intend, nevertheless, if he will reflect a little he will remember that he certainly did use language to the effect that there had been a pandering to the disloyal portion of the community, and a yielding of principle to expediency, in the amendment as here proposed, which would meet his condemnation, he said, now and forever. I submit that that was saying directly that those gentlemen who had made this report were pandering to the disloyal sentiment in the community, and were sacrificing principle to expediency.

Mr. PROCTOR. As this matter of a disloyal sentiment has been spoken of quite frequently, I wish, Mr. President, to say this, in regard to pandering to any disloyal sentiment. I believe I am the only representative of the Democratic party in this Convention; but we do not recognize as a fact the imputation that the Democratic party is in any sense a disloyal party. Certainly I do not recognize any such fact, myself, and I will say so far as relates to pandering to any disloyal sentiment, that this amendment proposing to strike out the test oath, is not asked for by the Democratic party. A number of gentlemen have come to me, in this town, and told me, as American citizens, that they did not like the idea of being compelled to come up and take the oath of allegiance, and they have asked me why I did not object to such a provision, presuming that I would be the first to object. I said to them—I "Gentlemen, we are willing to take any test oath that you Union men are, and if you are willing to take that oath, we are." I want it distinctly understood that this amendment does not come from the Democratic party, and we do not ask it. We may oppose this Constitution and we may not. We shall be governed by our judgment of what is right and proper in that respect, at the expiration of the session of this Convention.

But I do not want it charged that this proposed amendment has come from the Democratic party at all. If it originates with that party, I, for one, know nothing about it, and I wish to place the Democratic party right on that point. We, as Democrats, know very well that you Union men have the majority here, and full control of this Convention. We know furthermore, that there are two objects for forming this State Government. One is the amendment of the Constitution of the United States, for the purpose of abolishing slavery, and we say give us a good State Constitution and we are willing that you should do that. The other object is, that there is a remote possibility that the election of the President of the United States, soon to take place, may not be decided by the people, but may be thrown into the House of Representatives, and we are cognizant of the fact that in such an event Nevada, if admitted as a State, would have just as many votes for the next President of the United States as the State of New York. But we are willing to grant that, too. Give us the right sort of a loyal Constitution and frame of government, and I pledge you my word that, knowing all these things, we will nevertheless support it. But I do not want you to place us in an improper light. I believe that there are more Union men than Democrats who will refuse to come up to the polls and vote under that test oath provision, and I do not want this amendment charged as coming from the Democratic party, or as having been demanded by the Democratic party.

Mr. DuLONG. I certainly know that it did not emanate from the Democratic party, because I do not happen to belong to that institution, and I was the one who proposed in the first place that it would probably be better to leave this matter to statutory enactment, rather than to embrace it in the fundamental law. I made no secret of my position, and other members of the committee did not of theirs. Now, sir, what is the use of talking about motives here? Every member's motives are presumed to be correct, until he is convicted in some way of bad motives. The gentleman from Douglas talks about our desiring to have things our own way in the Convention, or threatening to bolt from it. I suppose the gentleman's shaft was aimed at me, and I am willing to receive it.

Mr. HAINES. I had no reference to the gentleman from Storey; in fact, I did not know who the party was.

Mr. DuLONG. I will state this, that I would consider it my bounden duty, as a member of this Convention, if I should find I cannot conscientiously support the Constitution, either to rise and state, as the gentleman from Humboldt (Mr. Dunne) did, that it is my intention to oppose your Constitution, thereby forewarning all other members that there is among them an enemy of what they are framing, so that they may govern themselves accordingly, or else the moment that, in the process of framing the Constitution, anything should be incorporated into it which my conscience would not permit me to recommend my friends to vote for, to withdraw from the Convention. In such an event I should certainly feel it my duty to withdraw, not out of any disrespect to the Convention, but on the contrary on account of my respect for the Convention, and my respect for myself. These are my own peculiar views, and other gentlemen may entertain different views. My idea was that the very moment anything was adopted in this Constitution which I could not indorse, it would become my duty to let the Convention know that owing to that fact

I could not vote for the Constitution, and that therefore, being an enemy to the Constitution, I should not have any further hand in its construction. But this is merely a question of taste, on which the best of men and finest of gentlemen might differ. But I did not pretend in any spirit of hostility to foreshadow any such scores. And right in this connection let me examine this idea a little further. There are other men here I believe who have threatened to leave the Convention, or to oppose the Constitution, if their views were not carried out, but they have not left us. Now are there any of these gentlemen in the Convention who are determined to oppose the Constitution, and who desire to so frame it as to secure its defeat before the people? I do not say there are any such, but I do say that there have been mutterings of discontent here. They have been heard on both sides. But that is a privilege which belongs to all men, and which is invariably exercised whenever they fail in some cherished object of their own.

These, however, are all matters foreign to the question before us. I deny that this amendment is pandering to any thing, to any sentiment, or to any party. I deny that it is a sacrifice of any principle, or that it is in any sense a yielding of principle to expediency. I say it is purely a question for men of sense to consider, as a practical question. Shall we put this test oath here in the Constitution where it will not be subject to any alteration hereafter, although all the loyal men as well as all the disloyal men in the State may wish to change it in some respects, or shall we leave it, like other subjects, to the Legislature to provide for, according to its discretion—subject to the action of succeeding Legislatures, elected to represent the peculiar views of their constituents? Now I believe, for one, in the propriety of making it a statutory rather than a constitutional provision. If others disagree with me in that I do not attack their motives, and I do not wish them to attack mine.

Mr. STURTEVANT. This thing may all be fair enough, but there is one thing you may all swear to at any time, and that is you will never find me on the fence, and if you do you may knock me off with a pick handle. [Laughter.] This looks to me like a kind of flank movement. Now the majority of the Convention having got things all their own way, it is policy for them to secure all the votes they can. It does not matter if it is a negro that votes, his vote is just as good as a white man's if it is received, and counts just as much. And if a Copperhead votes, of course his vote counts as much as my own, or the vote of the gentleman from Storey, or any other man. My understanding of this matter, and I think it is correct, and that the whole Convention will bear me out in it, is that whenever you strike this oath out it will suit the Copperheads. "That is a pretty good Constitution," says the Copperhead, "now they have struck that oath out."

Mr. PROCTOR. I would like to ask the gentleman a question. If a man is challenged now, on the ground of disloyalty, even without this provision, what kind of oath does he have to take?

Mr. STURTEVANT. Well, if I administered it, it would be a mighty strong one. [Laughter.]

Mr. PROCTOR. But would it be any stronger for being incorporated in the Constitution?

Mr. STURTEVANT. That would depend on what kind of a law we had. If I had my way I would give him such a strong oath that if he was a Copperhead it would kill him sure, to take it. [Laughter.] Now I do not like the idea of making this amendment here, because I am satisfied it is designed only as a sort of compromise, to cool things down a little, so as to gather in as many votes as possible from those who think in a certain way. I am not a Buchanan man, nor a peace man of any kind. I believe that when the defenders of the country are in a tight place we ought to send help, and I do not believe in allowing the forts which belong to the country to be torn to pieces without a fight for it. This question looks to me about in this shape: This oath is a very good one, a reasonably strong oath, and I cannot see for the life of me why we should not leave it where it is. When we had to refer it, as I remarked this morning, why should we not have referred the whole thing to a committee of five? I say it was a kind of flank move, a kind of masked battery movement—this referring it without special instructions. It was good generalship, I acknowledge, but I hope this amendment will be defeated for all that.

Mr. BANKS. Now, sir, a great deal has been said here about matters of policy and duty, and references have been made to gentlemen's motives, and beautiful things have been said in a very handsome manner, all of which I should have appreciated if this had been a school for declamation. But really, as I understand, there is but one question involved to which gentlemen ought to be addressing themselves here, and that is this: Does that provision of the proposed Constitution, amended in the way it is now proposed to amend it, provide that the Legislature shall have power to prescribe any such oath as this, or not? Now there is some doubt, among candid, thinking men in regard to that matter, and for the purpose of having an opportunity to examine the proposed amendment in connection with the original article, as we have it only on the clerk's desk, and not before us here in print, in order to consume as little time as possible in making up our minds whether the copy as we have it engrossed here does or does not authorize the Legislature to prescribe an oath of this kind, I will move to pass the article over on the file for the present. Then I understand it will come up at the head of the file to-morrow morning.

Mr. CHAPIN. The gentleman had better move to lay it on the table, and then we can call it up whenever we get ready.

Mr. HALL. I hope that motion will not prevail. Now, sir, I have opposed the incorporation of this oath in the Constitution, and I have given my reasons. I do not care who may doubt my loyalty; I am as loyal as the next man. But I say, let the Legislature prescribe that oath, and do not let us fill up the Constitution with legislative provisions. It seems to me that the effect of our incorporating that oath in the Constitution will only be to show the community that we are afraid they will doubt our loyalty. This is no place for such an oath, and I hope we shall leave it to the Legislature. I have the utmost confidence in that body.

Mr. DeLONG. There is no question in my mind as to the propriety of this amendment, but what surprises me is the fact that those gentlemen who do not believe that this provision would leave it to the Legislature, nevertheless, have so little confidence in their own judgment that they cannot propose an amendment that will. That is what astonishes me. I cannot say that I ever saw or heard of a question which I could not amend so as to suit at least my own views. Now if any member has any real and sincere doubt as to whether or not this matter is left to the Legislature, let him move an amendment. I proposed to offer an amendment here to the gentleman who first raised that question, which I thought placed it beyond all possibility of a doubt, saying in so many words that "the Legislature shall have power to prescribe any other or further test as a condition of voting;" but that would not give satisfaction, or the amendment might have been offered and acted upon, and consequently it appears to me that, for some reason which I cannot understand, unwarrantable delay is desired. I would like to know the object of it.

Mr. JOHNSON. I surmise that the inquiry of the gentleman from Storey, (Mr. DeLong,) if I understood him correctly, was addressed in part to me. I did not know, at the first impulse, whether I ought to reply or remain silent; but fearing that silence might be misconstrued, fearing that a doubt might be suggested to the minds of some members regarding a matter concerning which no sentiment I have uttered or vote I have cast in this Convention, justly renders me amenable to doubt or suspicion—that is as to whether I was or was not sincere—my own self-respect prompts me to reply to the gentleman from Storey. Otherwise I might deem it a question which called for no reply from me.

Now I will say in regard to the question of sincerity, upon this or any other subject, that I flatter myself there is not a member in the Convention who has disagreed with me upon any subject before the Convention, who has ever had, up to the present moment, the right to express a well-grounded suspicion that I was insincere in any vote, or any expression of opinion upon such subject. For if there is any one peculiar characteristic of my nature, it is a disposition to utter boldly and freely my sentiments, whether, as to the public, they happen to be popular or unpopular, or whether they are such as would be likely to meet the approval or the disapproval of my fellow members in this Convention.

I have endeavored, and shall continue so to do, to reconcile the action of this Convention with the views and wishes of my constituents, so far as they are in accordance with my own ideas of justice and propriety.

I have had occasion to speak heretofore of the matter of a sacrifice of principle, although in the present instance I conceive that the question of policy or expediency has little to do with the question immediately before the Convention. But I repeat—and I flatter myself that the Convention will believe I mean what I say—that it was not for the purpose of clogging, or delaying, or postponing the discussion of this matter, that I asked to have the report laid over. It was simply that I might have an opportunity to examine and determine for myself as to the effect of the language employed. It was with no desire for delay, and it is no test of my sincerity that I declined to offer the amendment which the gentleman from Storey prepared beneath my nose, which appears in his hand-writing, and which he says he thinks is well calculated to meet my views. I say if, upon a careful and critical examination, such as is due to myself, in order to obtain a proper understanding of the subject before I vote upon so important a question; if after such deliberation as I ought to give, in deference to the people who sent me here, I find that these amendments are applicable to the original article, if I find the article so amended really does give the Legislature the power which the gentleman from Storey contends it does, to prescribe a test oath for electors, then I shall be ready to concede the point, and unite with him in support of the proposition. But whilst I am willing to do this, I will not, on the spur of the moment, consent to be put to the test, and required either to adopt the amendment which the gentleman from Storey suggests to meet what he conceives to be my views, or declining so to do, without the opportunity of making due examination, to place myself on the record in opposition to the entire proposition. I do not desire to occupy any such position until I have had an opportunity to con the matter over in my own mind, to ascertain the fit place for any amendments I may desire to offer, in order to meet the case as presented.

Mr. DeLONG. Will the gentleman allow me to interrupt him? Did I understand him correctly as saying that I thrust an amendment under his nose?

Mr. JOHNSON. I mean to say that the gentleman prepared an amendment for me to present.

Mr. DeLONG. No, sir; it was handed to me by another gentleman, and I merely asked him if it would meet his views; that was all.

Mr. JOHNSON. I knew of no other paternity for the amendment.

Mr. McCLINTOCK. I wrote it and proposed it.

Mr. JOHNSON. It matters not who may have written it; I think I can propose an amendment which will suit my views when I desire to do so. I find no fault, however, with the gentleman from Esmeralda for proposing it, or with the gentleman from Storey for asking me to accept it; but when the gentleman presses that as a reason for refusing to postpone, and makes it the basis for asking the other question—"Are gentlemen sincere in their views?" I do find fault. I should not have thought of the matter of the amendment but for the question which followed it. The gentleman takes the ground that, because he had prepared an amendment to meet the objection raised by myself, necessarily that amendment should be received and adopted, and I should claim or accept the paternity of that amendment.

Now I do not know as it is required that on this question or any other, I should constantly manifest a desire to discuss the point involved, so as to delay the question. I only suggested the idea that such might be the effect of the section as proposed to be amended, and I think it was no more than proper that an opportunity should be afforded for investigating the matter. I do not feel authorized to speak for others. My colleagues may speak for themselves, as they are capable and well prepared to do; but I am to be placed on the record on this question, and whilst I claim no more responsibility than any other member, I believe that none other has greater responsibility than I can claim the right, therefore, to judge and to vote upon all questions for myself. It was with that view that I asked the gentleman from Storey to postpone the consideration of the report until to-morrow, and if this had been acceded to, a long discussion would not have been necessary. At least I am sure that a greater length of time would not have been consumed upon it than has already been.

Mr. BANKS. For the purpose which the gentleman from Ormsby contemplates, I move that this report be returned to the general file. It will then, I understand, come up the first thing to-morrow, being at the head of the file. I see no better way to dispose of the subject.

The PRESIDENT *pro tem.* (Mr. Collins) suggested that there was some doubt in regard to the propriety of this motion, as the Convention had taken up the report by a suspension of the rules upon a two-thirds vote.

Some discussion followed on the question of order involved.

Mr. BANKS withdrew his motion, and moved instead that the report be made the special order for to-morrow, at ten o'clock.

Mr. DeLONG. I wish to say a word in explanation. The only thing which called forth from me the remark in relation to the sincerity of gentlemen was simply this, that when it was proposed to suspend the rules in order to consider the matter at this time, not a single voice was raised in objection, but after the rules had been suspended, and when the report was before the Convention, with full power to act upon it, and amend it, or adopt it without amendment, or do any thing else with it, then only the objection of want of time to examine it was raised. That was the only thing that led me to consider the question of sincerity, for it did look extraordinary, that after we had suspended the rules in order to consider the matter, gentlemen should raise the question of want of time to consider it.

Mr. STURTEVANT. Is the gentleman aware that we did not know what the report was until after the rules were suspended? It was referred to a select committee, without instructions, and we knew nothing in regard to it.

Mr. DeLONG. I am not aware what the gentleman from Washoe knows.

Mr. STURTEVANT. I was not here when the proposition was first made, and it seems to me that the whole afternoon has been consumed to no purpose.

Mr. JOHNSON. I was in the chair when the motion to suspend the rules was made, and the only opportunity I had to speak upon the subject was after I had vacated the chair, and called the gentleman from Storey (Mr. Collins) to my place.

The question was taken upon the motion of Mr. Banks to postpone the subject until ten o'clock, A. M., to-morrow, and upon a division the vote was—ayes, 13; noes, 12. So the motion was not agreed to.

The question recurred upon the adoption of the report of the committee.

Mr. CROSMAN. If it is in order, I will move to amend the report of the committee, by inserting the language which was quoted here a short time ago. I am not prepared on the cursory examination I have been able to give to this subject, and with the little knowledge I have of it at the present time, to vote in favor of an amendment of that character. I am in favor of leaving the matter to the Legislature, to prescribe the oath to be taken. Let the Legislature be empowered to prescribe such an oath as they think best, but let us put it beyond cavil, so that when the matter is acted upon in the Legislature no question can be raised as to the constitutionality of such action. That seems to be the only objection, and I therefore move to amend the report by substituting in place of the proviso proposed to be stricken out, the following words:

"And the Legislature shall have power to prescribe any other or further rules or oaths, as may be deemed necessary, as a test of electoral qualification."

Mr. JOHNSON. I have had occasion to say to this Convention before—and I regret very much the necessity of again addressing the Convention on the subject—that one of the reasons why I objected to the consideration of this matter to-day was that there may be no

necessity for any further amendment. Probably it is all right as it is, and if so I do not desire to insert any extraneous matter or surplusage. By taking a short time for examination we can ascertain whether this language, as reported, covers all the objections or not, and if it does we shall not require any further amendment. I hope, therefore, that the consideration of the report will be postponed, and for that purpose I move that it be made the special order for to-morrow at eleven o'clock, and upon that motion I demand the ayes and noes.

Mr. KENNEDY. I fully coincide with the remarks of the gentleman from Ormsby, (Mr. Johnson,) and I have no doubt but that he will satisfy his own mind in regard to the matter; but the subject has now been discussed at least two hours, and it seems to me that there has been ample time for any examination necessary in regard to it. Now I venture to say that if it is postponed until to-morrow it will take up an hour or two then, and a majority of the Convention will not at that time have examined the report, nor the amendment which may be offered by the gentleman from Ormsby.

Mr. FRIZELL. I heartily concur in the remarks of my friend from Ormsby, (Mr. Johnson,) because it is a very important question, and I desire that every member may satisfy his mind upon it. As to my own views, as I said on a former occasion, I honestly think that the matter should be placed in the hands of the Legislature. But I am not a very able and thorough constitutional lawyer, and I have heard views advanced here to-day by my friend from Ormsby, which I think ought to be investigated. If the Legislature would be prevented or inhibited by this section, as amended, from passing a law prescribing this oath, although I have been one of the most ardent friends of leaving the whole matter to the Legislature, yet I would certainly prefer to allow the oath to remain in the fundamental law. For that reason I hope that this motion of the gentleman from Ormsby will prevail, and that we shall all take time to consider this important question.

Mr. LOCKWOOD. I desire to make an explanation of my vote, as gentlemen with whom I have had some conversation might otherwise think it very strange that I should vote against putting this matter over. It will be remembered that I contended, at the time this oath was inserted, that it was altogether unnecessary, and that by the plain reading of the Constitution the matter was left in the hands of the Legislature. I considered it so at the time, but in the face of statements made here to-day by very reliable gentlemen, upon whose legal opinions I for one should certainly be willing to trust an important suit at law, to say the least, I am not prepared to say there is no doubt on the subject. Gentlemen who know, or who certainly ought to, and I believe do know a great deal more about this matter than I do, differ in regard to the power of the Legislature to prescribe an oath of this kind. Therefore I say, if there is reasonable room to doubt whether any Legislature, acting under this Constitution, would be empowered, by any provision of the Constitution here, to enact a law which would prevent persons from voting who are disqualified from the exercise of that right by Section 2 of this Article, then certainly I am in favor of giving the matter a more rigid examination.

Mr. DeLONG. Has the gentleman, or anybody here, any doubt, or can he have any doubt, that if this amendment now proposed is adopted the Legislature will have that power?

Mr. LOCKWOOD. I certainly do not doubt it, but I see no reason to satisfy my mind why it should not be further considered. The question is an important one, and as to occupying time I am as much opposed to that as anybody, because I am as poor certainly as any other member.

Mr. WETHERILL. Now if this subject is put over, it will probably consume another day. There has been already a long debate upon it, and I think every gentleman's mind is fully and entirely made up. There is a doubt here, but it can be removed without any further discussion, on this floor or elsewhere, by a simple amendment lodging with the Legislature the power, beyond any question, of prescribing rules and regulations for voting. I want to leave that power with the Legislature beyond the possibility of a doubt, but I would like to have the question decided at once, and not be left to consume to-morrow, and perhaps another day besides.

The question was taken by yeas and nays on the motion of Mr. Johnson to postpone the report until to-morrow at eleven o'clock, and the vote was—yeas, 14; nays, 15—as follows:

Yeas—Messrs. Banks, Brady, Crawford, Frizell, Hobson, Haines, Hawley, Kinkead, Lockwood, Murdock, Proctor, Sturtevant, Warwick, and Mr. President—14.

Nays—Messrs. Broman, Chapin, Collins, Crosman, DeLong, Dunne, Earl, Hovey, Hudson, Kennedy, Mason, McClinton, Parker, Tagliabue, and Wetherill—15.

So the motion to postpone was not agreed to.

The question recurred on the adoption of the amendment offered by Mr. Crosman.

Mr. BANKS. I wish to state my position upon this matter, without going into any argument. As between the proposition of leaving this unrestricted and dangerous power in the hands of the Legislature, and that of the insertion of the oath in the fundamental law, I shall vote for retaining the oath in the Constitution. I do not want to place such a dangerous power in the hands of a majority of the Legislature as to allow them to prescribe such an oath as their prejudices or passions may happen at the time to dictate, and therefore I prefer to allow the oath to remain in the Constitution, and shall vote against the amendment.

Mr. FRIZELL. As there have been but two reasons as yet advanced why this amendment should not be adopted, one by the gentleman from Ormsby, (Mr. Johnson,) and the other by the gentleman from Humboldt, (Mr. Banks,)

who has just taken his seat, I beg leave to say that I differ entirely from both those gentlemen. Inasmuch as ours is a representative form of government, the people electing their own representatives every year, or every two years, and those representatives, thus chosen, coming up to the Capital to represent in the Legislature the interests, and feelings, and political sentiments of the people, I do think that this question, when it is placed in their hands beyond a doubt, beyond all peradventure, is placed exactly where it should be, and therefore I differ diametrically from my friend from Humboldt.

So far as the gentleman from Ormsby (Mr. Johnson) is concerned, his objection was that the language employed might be mere surplusage. Now, Mr. President, it seems to me that all who heard the amendment read must admit that it is direct, concise, and perfect in its construction and meaning, and therefore no man can say that it can by any possibility be construed as surplusage. Again, as has been said, under our present circumstances the passions of men are, as it were, like a furnace seven times heated. Human nature, sir, is different and varied in its forms of manifestation. There are some men who, upon occasions, or under circumstances like those which now surround us, and which may surround us hereafter, act very differently from other men in like circumstances. I impeach no man's motives; nothing could be further from me, I hope, than that. But I do say that under present circumstances, any man who cherishes sentiments of patriotism, truth and loyal conservatism, any man who has been reared under the Constitution and Government of the United States, may manifest his true and loyal sentiments without going to these extremes. In order to be a patriot, and a true man, he need not ride on the crest of the wave, and bear the American eagle all to pieces, not leaving so much as a feather of that national bird. He need not, on the one hand, like the gentleman from Ormsby, be so very much afraid of his constituency, or on the other hand, like my friend from Lander, who took that old man by the hand, go into patriotic paroxysms. No doubt that was a good old man. I hope so, certainly; and I hope he will live to see his country free, enlightened, contented, and prosperous.

But I say there is another class of men whom it would be well to look after and control, when the great waves of passion are surging, and boiling, and seething, and driving us God knows where—it may be toward the rocks and breakers of destruction—I say it is the duty of men who are cool, if they think there is danger, to guide and direct those waves and storms, and hold in check the turbulent passions of men. They should not get up, under such circumstances, in a deliberative body like this, and seek to inflame men's passions. Why, sir, gentlemen would make you believe here that all the past history of the United States goes for nothing. I would like to know if the Constitution of the United States, which is a simple, concise document, does not govern us, and if we are not bound also by the act of Congress under which we are framing the fundamental law of this State?

Now if I have been in anywise harsh in these remarks, I can only say that I regret it, for I have not intended to reflect on any man. But these are my views. I am not willing to come here and sit three weeks, expending my money and taxing my brains, and then have it all go for nothing, on account of this little question of expediency, which I do believe is entirely correct and not violative of any principle. The question which arises here, is merely this: There are probably from fifteen hundred to two thousand voters in this Territory, the great majority of whom are true and loyal men, although they may have been in the State of Missouri, or the State of Kentucky, or some other of the border States, at some stage of this rebellion, and may have had muskets on their shoulders and fought on the side of the rebellion against the Federal Government. Nevertheless, those men are in the main loyal men, although they adhere to old names, old principles, and old tenets. The name of "Democracy" is dear to them. They think this oath should not appear in the Constitution, and nevertheless they are loyal men. Now if you call it a question of expediency, I will admit it to that extent; but we provide that the Legislature can enact that provision, and I have no doubt that they can and will do it. I do admit, because I always endeavor to speak my true sentiments, that it is to a certain extent a question of expediency; but do gentlemen doubt the loyalty of the Legislature which is to be elected? Look at the Union resolutions which were adopted by our last Territorial Legislature. In the sterling patriotism of their language they are equal to almost any State paper ever put forth in the United States. I have read them time and again, and think them perfectly beautiful. What reason, then, have gentlemen to doubt that the incoming Legislature will be equally patriotic and loyal? I think we ought to adopt this amendment, and leave this matter entirely to the Legislature.

Mr. RINKEAD. I ask that the section may be read as it will stand, if the amendment is adopted.

The SECRETARY read as follows:

SEC. 7. Provision shall be made by law for the registration of the names of the electors within the counties of which they may be residents, and for the ascertainment by proper proofs of the persons who shall be entitled to the right of suffrage as hereby established, to preserve the purity of elections, and to regulate the manner of holding and making returns of the same; and the Legislature shall have power to prescribe any other or further rules or oaths, as may be deemed necessary, as a test of electoral qualification.

Mr. HAINES. I want to ask if it is necessary to inform the Legislature that they have the power to prescribe any such oath? Or does it make it in any way binding upon them by

one adding that last amendment? If they have the power, is it necessary for us to say so?

The PRESIDENT *pro tem.* The gentleman has heard the amendment discussed, and must judge for himself. The Chair cannot be called upon to give an opinion.

The question was taken by yeas and nays upon the adoption of the amendment proposed by Mr. Crosman, and the vote was—yeas, 19; nays, 10—as follows:

Yeas—Messrs. Brosnan, Chapin, Collins, Crosman, DeLong, Hall, Hamlin, Hawley, Hoge, Hudson, Kenaday, Keyes, McClelland, Murdock, Parker, Preston, Tefft, Waterbill, and Mr. President—19.

Nays—Messrs. Burke, Busby, Crawford, Dunne, Fellows, Hadley, Hadsell, Lockwood, Sherwood, and Wardle—10.

So the amendment was adopted.

Mr. BROSNAN. I move the adoption of the report as amended.

Mr. DUNNE. I did not wish to interrupt the calling of the roll by an explanation of my vote, but with the leave of the Convention I will make it now. I am opposed to the amendment, because I am opposed to leaving so important a question to the conflicting tides of legislation. I am opposed to it, also, on the ground of policy. It looks too much like setting a trap. I do not suppose it is necessary for me to say—as some gentlemen have been in the habit of saying—that I do not intend to reflect on any gentleman; but as that seems to be the general practice, I will disavow any such intention. I say it looks to me too much like saying to men of a certain class that we will strike out this provision, in order to get all the votes we can, and after we get their votes we will, in the Legislature, pass whatever provision we please. I am opposed to it on that ground; and if the amendment should prevail, I would prefer to take the whole thing out of the Constitution altogether. I should prefer to see it left in that way, rather than with an amendment of this sort, leaving the power in the hands of the Legislature to make any tests they please. I would prefer to leave it so that no new tests can be made in the future, but that every man whose name is registered shall be required to take an oath of allegiance. If that is provided in the Constitution, and any man or set of men shall in the future desire to get it out, they can only do so by an amendment of the Constitution.

Mr. FRIZELL. I would like to have an opportunity to explain my vote. I am opposed again, diametrically, to the other gentleman from Humboldt, (Mr. Dunne.) A very wise and great orator of Athens once said—"Observe, I beseech you, oh Athenians, how different your conduct appears from that of your ancestors." Now Americans, in these latter days, have grown very wise and statesmanlike. Heretofore, until the present year, Americans all over this broad republic were extremely jealous, and held it as an inalienable principle that in fundamental laws only certain bold lines should be set up, and all the details affecting the particular interests of the people should be left to the Legislature. But in these latter days men have grown more wise, and to-day everything which suits their peculiar views shall be put into the Constitution.

The PRESIDENT *pro tem.* The Chair will suggest to the gentleman that this proper time to explain his vote is when his name is called.

Mr. HAWLEY. I ask for the yeas and nays on the adoption of the report as amended.

Mr. DUNNE. I call for a division of the question. There are some amendments which we may all vote for, and I want a separate vote upon each amendment.

The PRESIDENT *pro tem.* said a division of the question having been called for, the first question would be upon the amendment to Section 4, striking out the words "absent from this State," so as to read—"The right of suffrage shall be enjoyed by all persons otherwise entitled to the same, who may be in the military or naval service of the United States," etc.

Mr. HAWLEY. I do not wish for the yeas and nays on that amendment.

The question was taken on the adoption of the amendment, and it was agreed to.

The question was stated on the adoption of the second amendment—to strike out, in the same section, the words "for officers of a lower grade than State officers," so as to read—"*Provided*, the votes so cast shall be made to apply to the county and township of which the said voters were *bona fide* residents," etc.

The question was taken, and the amendment was agreed to.

The PRESIDENT *pro tem.* said the question would next be upon the adoption of the several amendments as a whole, the third amendment having already been amended by the substitute offered by the gentleman from Lyon, (Mr. Crosman.)

Mr. DeLONG said he understood that the question now was on the adoption of that section as amended on motion of Mr. Crosman.

Mr. JOHNSON. The question, as I understand it, is now on the report of the committee as amended. A division was called for, and the first and second amendments were acted upon. It occurs to me that the vote having been taken on the amendment of the gentleman from Lyon, (Mr. Crosman,) the question now is on the section as reported by the committee.

The PRESIDENT *pro tem.* The Chair will so decide.

Mr. DUNNE. I certainly do not understand it so.

Mr. HAWLEY. I call for the yeas and nays on the adoption of the report of the committee.

Mr. BANKS. As the question is now presented, I certainly do not understand it. I understand that the report was amended, and that a division was called for. We then voted on two of the propositions embraced in the report, and they were adopted, and now we are to vote on the third.

The PRESIDENT *pro tem.* No, sir; we have

voted on the third, and now we are about to take the vote on all the propositions as a whole, each proposition having been adopted separately.

Mr. DUNNE. I have been waiting for the question on striking out the proviso in Section 7. Those who wish that part of the section to remain, have the privilege of amending it first, so as to make it as perfect as possible; and I understand the amendment of the gentleman from Lyon (Mr. Crosman) to have been made for the purpose of perfecting the section, before voting on the proposition to strike out. With that understanding, I call for a division of the question.

The PRESIDENT *pro tem.* There is no question presented as to striking out. It was simply an amendment to Section 7. A division of the question has been had, and the question comes now upon agreeing to the report as a whole.

Mr. BANKS. But the gentleman from Douglas (Mr. Hawley) calls for the yeas and nays on the last amendment. I certainly understood that the vote was to be taken next on that, and I was waiting for that vote.

Further discussion took place relating to questions of order.

Mr. DUNNE. In order to get to a direct vote on striking out the oath from Section 7, I will move to reconsider the vote by which the amendment proposed by Mr. Crosman was adopted.

The PRESIDENT *pro tem.* Did the gentleman vote with the majority?

Mr. DUNNE. I really do not know; the question was so mixed. [Laughter.]

Mr. HAWLEY. I voted "aye," and I move the reconsideration.

The question was taken on the motion to reconsider, and it was not agreed to.

The question recurred on the adoption of the report, as amended, and the vote being taken by yeas and nays, resulted—yeas, 17; nays, 11—as follows:

Yeas—Messrs. Bronson, Chapin, Collins, Crosman, Ewing, Hart, Frizell, Hovey, Hudson, Kennedy, Mason, McGlasson, Murdock, Parker, Tagliabue, Wetherill, and Mr. President—17.

Nays—Messrs. Banks, Brady, Crawford, Dunne, Fuller, Haines, Hawley, Kinkead, Lockwood, Proctor, Sturtevant, and Warwick—11.

So the report was adopted.

During the voting—

Mr. HAWLEY. For substantially the same reasons which have been given by the gentleman from Humboldt, (Mr. Dunne,) I shall vote "no." I believe in taking no step backward, and I will never consent to emasculate this instrument in the manner proposed by the report of the committee.

Mr. STURTEVANT. I shall vote "no" on this amendment for the reason that I do not believe in throwing out any inducements to gain the copperhead influence, even though we should help save us badly.

[The PRESIDENT in the chair.]

The result of the vote having been announced, as above stated—

The question was stated to be on the third reading and passage of the article, as amended.

The SECRETARY read the article, as follows:

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION 1. Every white male citizen of the United States (not laboring under the disabilities named in this Constitution,) of the age of twenty-one years and upwards, who shall have actually resided in the State six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now are or may hereafter be elected by the people, and upon all questions submitted to the electors at such election.

SEC. 2. No person who has been or may be convicted of treason or felony, in any State or Territory of the United States, unless restored to civil rights, and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government, and no idiot or insane person shall be entitled to the privilege of an elector.

SEC. 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum at public expense; nor while confined in any public prison.

SEC. 4. The right of suffrage shall be enjoyed by all persons otherwise entitled to the same who may be in the military or naval service of the United States; *provided*, the votes so cast shall be made to apply to the county and township of which said voters were *bona fide* residents at the time of their enlistment; and provided that the payment of a poll tax or a registration of such a vote shall not be required as a condition to the right of voting. Provision shall be made by law, regulating the manner of voting, holding elections, and making returns of such elections, wherein other provisions are not contained in this Constitution.

SEC. 5. During the day on which any general election shall be held in this State, no qualified elector shall be arrested by virtue of any civil process.

SEC. 6. All elections by the people shall be by ballot, and all elections by the Legislature, or by either branch thereof, shall be viva voce.

SEC. 7. Provision shall be made by law for the registration of the names of the electors within the counties of which they may be residents, and for the ascertainment by proper proofs of the persons who shall be entitled to the right of suffrage as hereby established, to preserve the purity of elections, and to regulate the manner of holding and making returns of the same, and the Legislature shall have power to prescribe any other or further rules or oaths, as may be deemed necessary, as a test of electoral qualification.

SEC. 8. The Legislature shall provide by law for the payment of an annual poll tax of not less than two, nor exceeding four dollars, from each male person resident in the State, between the ages of twenty-one and sixty years, (unrivilleged American Indians excepted,) one half to be applied for State, and one half for county purposes; and the Legislature may, in its discretion, make such payment a condition to the right of voting.

SEC. 9. All persons qualified by law to vote for Representatives to the General Assembly of the Territory of Nevada, on the 21st day of March, A. D. 1864, and all other persons who may be lawful voters in said Territory, on the first Wednesday of September, next following, shall be entitled to vote directly upon the question of adopting or rejecting this Constitution.

The question was taken by yeas and nays on the final passage of the Article, and the vote was—yeas, 25; nays, 4—as follows:

Yeas—Messrs. Beatie, Brady, Bruyeas, Chapin, Coffroth, Crawford, Crosman, Delong, Bird, Frisbie, Folsom, Hanson, Hawley, Hover, Hudson, Kennedy, Kinkead, Lockwood, Mason, McClinton, Murdock, Porter, Tagliabue, Wetherill, and Mr. President—25.

Nays—Messrs. Dunne, Proctor, Sturtevant, and Warwick—4.

So the article was passed.

During the voting—

Mr. DUNNE. I shall vote "no" for the same reasons which I gave in regard to the amendment.

Mr. McCLINTON. I did not avail myself of the opportunity to explain my vote upon the passage of this amendment, but I will do so now. I shall vote "aye" for the reason which I have stated frequently in this Convention—that I do believe that, from the commencement of our session, we have arrogated to ourselves too much power. We have incorporated many provisions already, in this Constitution, which I think belong properly to the Legislature. I will state further, too, that I should have voted against striking out this oath had not the provision been amended so as to meet what I deem the necessities of the case. But the provision as it now stands meets my approbation. Had not the amendment proposed by the gentleman from Lyon (Mr. Crosman) been adopted I should have voted "no," but as it now stands I vote "aye."

Mr. PROCTOR. I vote against the article because I do not like it, nor any part of it. I vote "no."

Mr. WARWICK. I desire to be excused from voting on this question, for the following reasons: It is well known to most of the members of the Convention that when it was sought to incorporate this oath it met with my approval, and I advocated it warmly. Now I have seen no reason since to change my opinion, and when the amendment was proposed I opposed it, as I oppose it now. And therefore, not desiring to have that oath stricken out, and looking upon the measure as a compromise, and one which I cannot sanction, yet not wishing to offer any factious opposition, I wish to be excused from voting.

Mr. DELONG. I object to his being excused.

Mr. WARWICK. Then I vote "no."

Mr. HAWLEY. I have voted in the negative, but I would like to have my vote changed from "no" to "aye," because I do not want it to go on the record that I vote against this article. Although I protest against the action of the Convention, still I will vote in favor of the article. I vote "aye."

Mr. STURTEVANT. I voted "aye," but I do not like to see the other side left entirely alone, and I will vote "no."

The result of the vote was then announced, as above stated.

PACIFIC RAILROAD.

The Convention resumed consideration of Article VIII, entitled Municipal and other Corporations; the question being upon the amendment offered by Mr. Kinkead, to substitute for the amendment offered by Mr. Crosman, the following as the proviso in Section 9:

"Provided, That the State may issue bonds bearing a rate of interest not exceeding seven per cent. per annum, to an amount not exceeding one and one-half millions of dollars, as guarantee the payment of interest or principal, or both interest and principal, of bonds to the said amount, on such terms as the Legislature may prescribe, to the company or incorporation that shall first connect by a first class railroad the city of Virginia with the main range of the Sierra Nevada Mountains."

Mr. BANKS. After the elaborate discussion which has been had upon this proposition, and matters generally pertaining to the Pacific Railroad, I do not propose to do more than simply state the reasons, by way of explaining my vote, why I shall vote against the amendment offered by the gentleman from Ormsby, (Mr. Kinkead,) and in favor of the amendment of which notice has been given by the gentleman from Lander, (Mr. Warwick.)

Uniformly, through the sitting of this Convention, I have voted in favor of granting aid to the grand work of this age, the Pacific Railroad, in the construction of that work across the Sierra Nevada Mountains, where such aid is absolutely demanded, and where, without aid, I fear no road like this will be constructed. The proposition of the gentleman from Ormsby is to lend the aid of the State in constructing what is purely a local work; one that will not materially benefit all parts of the State, and to which, if aid must be given, the counties interested should come to the rescue and advance that aid. Now I can conceive how the mines in all parts of the State will be benefited by the construction of a railroad connecting the State with the navigable waters of the Sacramento River, but I do not see how Humboldt County, or Esmeralda County, or Lander County, and other remote counties, are likely to be much benefited by such a measure as lending the aid of the State to the amount of a million and a half of dollars in aid of a road which will be nearly parallel to the Sierra Nevada Mountains. If aid is desired for a local work of this kind, for it will be almost entirely for the local convenience and profit of the counties in which the road is situated, I will most heartily advocate any proposition to authorize the counties interested to lend their aid. But I do not believe that the people of the distant parts of the Territory—and other gentlemen I think entertain the same views in that particular—are willing to lend their aid to a work which by no manner of reasoning can be shown to be of general usefulness to the people of the entire State. I hope therefore that the proposition of the gentleman from Ormsby will be voted down, and I hope he will reserve it for

same measure involving the question of county or corporate aid, and if the people of this city and Virginia, or the people of Storey, Ormsby and Washoe counties, desire it, I trust they will have ample power, under this Constitution, to distribute whatever amount of means they are able to spare for such a purpose. As to the proposition of the gentleman from Lander, (Mr. Warwick,) as it has been stated by him, it is one which in the main does not meet my entire approbation, because in practical efficiency I do not believe it comes up to what is actually required; but in preference to anything else which is before the Convention I shall vote for it, and I think possibly it may do much good.

Mr. DeLONG. Now I think that argument is about as baseless as that of the old Dutchman in New York, who, when the proposition was laid before him to aid in constructing the Erie Canal, voted against it because the canal did not run by his own house. We cannot run a railroad to every portion of the State, but if we connect the mines with the mountains, so as to convey lumber to the mining regions and ore to the mountains, it will enhance the value of property so much that taxation will bear far less heavily on the people of the distant counties, and thus we shall be enabled in time to extend the railroad gradually to those distant portions of the State to which the gentleman refers.

Now one word to my "cow county" friends—and I would call the particular attention of the gentleman from Douglas, (Mr. Hawley,) but I observe that he has gone out of doors and cannot hear me—I wish to say, nevertheless, that we have been accused of being particularly and peculiarly the representatives of the miners. We have been charged with having first secured the passage of this mining clause, and then having attempted to appropriate three millions of dollars to the Pacific Railroad. They say we first go to work and provide in the Constitution that the mines shall not be taxed, and then we turn around and favor this donation to the Pacific Railroad, thereby voting to impose all the burden of taxation upon the farming interest. They complain of this, and tell us it is all a trick; that we first vote out the Pacific Railroad in order to be able to vote out the taxation of the mines, and then, having got our own axe ground, we turn around and put in the three million clause again. Now I will show these gentlemen my own good faith in that matter, by voting upon these propositions according to the wishes of the cow county delegates. I do believe that the appropriation of a million and a half of dollars will cause a railroad to be built from Virginia City to this place, and thence down to the Truckee country; and that when that is done, it will enhance the value of the property of the State to a degree scarcely imagined at the present time. And Esmeralda and Humboldt Counties, though they might not feel it as immediately as Storey and Ormsby Counties, would yet feel it in a very great degree, and find it a benefit which would far more than compensate them for the amount which they would have to be taxed in order to bring about that result. But if the "cow counties" vote against it, I will vote against it also, if it is their wish, so as to show them that I have not got the words "mines and mining claims" stricken out of the taxation clause in order to trick them, or with any view of afterwards putting in a railroad appropriation.

Mr. PROCTOR. Is an amendment in order?

The PRESIDENT. An amendment to an amendment is already pending.

Mr. WARWICK. I call for the reading of the amendment now before the Convention.

The SECRETARY again read Mr. Kinkead's amendment.

Mr. WARWICK. If I understand the question rightly, Mr. President, this amendment is offered by the gentleman from Lyon, (Mr. Crosman,) who accepted in lieu of his own, the amendment to the amendment.

The PRESIDENT. The gentleman is entirely mistaken. The Chair will state the position of the question. The original amendment was presented while I was not present, but I am informed by the Secretary that the gentleman from Lyon, (Mr. Crosman,) accepted an amendment proposed by the gentleman from Lander, (Mr. Warwick,) and that must necessarily be regarded as the original amendment. To this the gentlemen from Ormsby, (Mr. Kinkead,) offers an amendment, and the question now is on the amendment proposed to the original amendment, that which was offered by the gentleman from Lander, (Mr. Warwick,) taking the place of the original amendment offered by the gentleman from Lyon, (Mr. Crosman.)

Mr. CROSMAN. I would ask for the reading of my amendment as it now stands.

The SECRETARY read as follows:

"*Provided*, That the State of Nevada may loan its credit to the Central Pacific Railroad Company to an amount not exceeding three millions of dollars when it shall have completed its road to a distance of eighty miles east from the navigable waters of the Sacramento River; but no appropriation of any character shall be made, unless sanctioned by a vote of the people."

The PRESIDENT. This, as just read, is the original amendment, and to it the gentleman from Ormsby, (Mr. Kinkead,) moves to amend by substituting the following:

"*Provided*, That the State may issue bonds bearing a rate of interest not exceeding seven per cent. per annum, to an amount not exceeding one and one half millions of dollars, or guarantee the payment of interest or principal, or both interest and principal, of bonds to the said amount, on such terms as the Legislature may prescribe, to the company or incorporation that shall first connect by a first-class railroad the City of Virginia with the main range of the Sierra Nevada mountains."

Mr. WARWICK. When I offered my amendment yesterday afternoon, I did so with an earnest desire that some compromise might be arrived at on this railroad question, by which the hands of the people would not be tied in the future, but that the people of the new State,

if they should find themselves able, might at some future time be at liberty to lend their credit towards the construction of this great national work. Every step towards effecting this object which has been taken by me, has been taken in a spirit of compromise. It has been my earnest desire, in view of the fact that this work receives the sanction of the entire United States, and that it appears to have been the earnest desire of every member on the floor of this Convention, to signify the fact that he is not an enemy to the project, to so far perfect or amend this proviso, if you please, as to bring it within such limits, or into such a shape, that it may receive the sanction of a majority of this Convention. It was in that spirit that I drew up the amendment which I did this morning, proposing to offer it as a substitute for the one I offered yesterday. But I saw that it gave offence to some members of the Convention, to assimilate particularly the Central Pacific Railroad—for some reason best known to themselves; and seeing that it did appear to give offence to a certain portion of the members of the Convention, I therefore, acting still in the spirit of compromise, as I stated before, was induced to offer another amendment, striking out that objectionable portion, and leaving it simply to specify only a railroad enterprise or enterprises. I prepared this amendment, which I will read again with the leave of the Convention:

"Provided, That the State may loan its credit to an amount not to exceed three millions of dollars for the encouragement of railroad enterprises; the manner of providing for the payment of the above sum to be left to the Legislature. But no appropriation shall be made unless sanctioned by a vote of the people at a special election to be held for that purpose, nor until after the taxable property of the State shall have reached the amount of fifty millions of dollars."

That was the proposition which I advanced this morning. I put in that last clause, because some gentlemen had spoken of our present poverty, and argued our inability to render that assistance which every one expressed his willingness to render. Our taxable property is now, I believe, a little over twenty-five millions of dollars; and before this proposition can possibly apply, the taxable property of the State must be doubled. Therefore, in that way, I remove the very strong barrier, which some gentlemen have placed in the way of lending our aid to this important enterprise.

Mr. DuLONG. If the gentleman will allow me, the taxable property of the State is forty-three millions now.

Mr. WARWICK. Is that the case? I will ask our Treasurer, the gentleman from Ormsby, (Mr. Kinkead,) if that was the basis of taxation last year?

Mr. KINKEAD. I presume the gentleman from Storey refers to the gross proceeds of the mines. That is not to come.

Mr. WARWICK. That is the precise position—not a prospective, but a present benefit. I mean by this amendment, not what will be, but what has been. The amendment provides that the appropriation shall not be made "until after the taxable property of the State shall have reached the amount of fifty millions of dollars."

Mr. DuLONG. That is what it is, very nearly; I am speaking of what it is now.

Mr. WARWICK. But they collected last year on less than forty millions of dollars.

Mr. DuLONG. But the tax has been held legal on the whole amount. If it was not collected, it was not the fault of the law. It was assessed, and on appeal, the Supreme Court has affirmed the legality of the assessment.

Mr. KINKEAD. I think the gentleman is a little wrong in the amount; he is about five millions out of the way, I believe.

Mr. DuLONG. I am not speaking of what was assessed, but of what was liable to assessment.

Mr. KINKEAD. To take what was assessed, is the only way to get at it.

Mr. WARWICK. Very well; I would like to know, then, if I insert here—because I want to see gentlemen show their hands—

The PRESIDENT [interrupting.] The only question before the Convention occurs on the amendment offered by the gentleman from Lyon, modified on the suggestion of the gentleman from Lander, and to which another amendment is proposed, as a substitute, by the gentleman from Ormsby (Mr. Kinkead.) The gentleman from Lander is at liberty, of course, to read the amendment, which he now proposes, for the information of the Convention, but not to discuss it.

Mr. WARWICK. I would inquire if it is not competent for any member to state his reasons for not sustaining the pending amendment? Can I not give my reasons why we should not attempt to provide for a road connecting with Virginia City?

The PRESIDENT. It is not competent for the gentleman to discuss the proposition which he holds in his hand, because it would not be in order to submit it to the Convention.

Mr. WARWICK. Then I will address myself to the proposition to grant aid to a railroad from here to Virginia City. Now, sir, I contend that it would be impossible to construct that road, or at least it would be a moral impossibility, and a financial impossibility, as it must appear to every one here upon reflection. The reason is that it is impossible to get the materials here except at such a cost as to render it impossible to raise the necessary funds for the construction of the road, especially when we consider the high rates of interest in this State.

Mr. KINKEAD. Has the gentleman made any calculation or estimates upon the cost of the materials, and the cost of getting them here by the wagon roads?

Mr. WARWICK. I suppose the iron will cost three cents a pound, to bring it here from Sacramento. But then, again, the iron is not the only material to be furnished. All of your

rolling stock will have to be transported in the same expensive way. The consequence, is that if you attempt to build a first-class railroad here, with "T" iron, you will find it one of the most extravagantly expensive roads ever built in the United States of America.

Mr. PROCTOR. I rise to a question of order. I believe the gentleman from Lander has occupied some fifteen or twenty minutes in all, in discussing this same question heretofore, and he has occupied about ten minutes now. We are approaching the time of adjournment, very nearly, or I would not have raised the point of order.

The PRESIDENT. The question of order is not well taken. Although the gentleman may have exceeded the allotted period of fifteen minutes the first time he spoke on this question, yet the rule only restricts him to not more than fifteen minutes at any one time.

Mr. WARWICK. As there is only a brief time, I will give way for any further business.

Mr. HAWLEY. I move that when this Convention adjourn, it adjourn until to-morrow morning at nine o'clock.

The question was taken, and the motion was agreed to.

Mr. WARWICK. I believe the Convention is already in possession of my views on this subject, and I am quite willing to come to a vote without any further remarks upon it.

Mr. KENNEDY. In order that we may reach a final vote on this question, I move that the time of adjournment be extended until half-past five o'clock.

The question was taken, and the motion was agreed to.

Mr. PARKER. And in order that we may come to a vote on this question, I move the previous question, and I do so because each member is allowed, according to the ruling of the Chair, to explain his vote, under the previous question, and that will take up the entire half hour.

The question was taken—"Shall the main question be now put?"—and upon a division the vote was—ayes, 14; noes, 14. So the previous question was not sustained.

The PRESIDENT stated the question to be first upon the amendment offered by Mr. Kinkead, which was read again by the Secretary.

Mr. CROSMAN. If that amendment is adopted, what will be the condition of the section?

The PRESIDENT. Gentlemen must judge for themselves the effect of the amendment.

Mr. CROSMAN. Well, sir, I say that one effect of the amendment proposed by the gentleman from Ormsby, would be to provide that the Legislature may make this appropriation without submitting the matter to the people. A simple act of the Legislature, under that amendment, would absolutely donate a million and a half of dollars, without submitting it to the people at all.

Mr. KENNEDY and others demanded the yeas and nays upon the amendment.

The question was taken by yeas and nays, and the vote was—yeas, 8; nays, 21—as follows:

Yeas—Messrs. Brady, Crawford, Earl, Fulweiler, Hawley, Kinkead, Parker, and Mr. President—8.

Nays—Messrs. Banks, Bronson, Chapin, Collins, Crosman, DeLong, Dunne, Fitch, Frisbie, Haines, Harvey, Hudson, Kennedy, Lockwood, Mason, McMahon, Proctor, Sturtevant, Tagliabue, Warwick, and Wetherill—21.

So the amendment proposed by Mr. Kinkead was not agreed to.

During the voting—

Mr. DeLONG. I wish to be excused, until I see how the cow counties go.

Mr. HAINES. I wish to explain my vote. I shall vote "no," from the fact that, as I have stated here before, I am opposed to bankrupting this new State for the benefit of any railroad, except it may be for such a one as shall first reach our boundaries in running order.

Mr. HAWLEY. I ask to be excused from voting.

Mr. STURTEVANT. I will wait a while before I vote.

Mr. DeLONG. I hope not; I want instructions from these gentlemen, as to how I shall vote.

Mr. COLLINS. Inasmuch as the benefit from this road would be confined to a few counties, I will vote "no."

Messrs. Hawley, Sturtevant, and DeLong, then had their names recorded as given above.

The result of the vote having been announced, as above stated—

The PRESIDENT said the question recurred upon the amendment offered by the gentleman from Lyon, (Mr. Crosman,) as it had been modified.

Mr. HAINES. I have an amendment to offer. I propose to amend the proviso by adding the following:

"And further provided, that no portion of any such appropriation shall be expended for the construction or equipment of a railroad outside of the limits of this State."

Mr. DeLONG. I have only to say in regard to that amendment, that the Hon. Leland Stanford, President of the Pacific Railroad Company, has stated on this floor that when that Pacific Railroad shall reach the confines of this State, they will not want anything—that the appropriations of the General Government will then be sufficient to enable them, with the addition of the proceeds from the earnings of the road, to extend the road as rapidly as it can be built through this State, without any aid from the State, and they would not want any such aid.

Mr. LOCKWOOD. And he stated still further, that he spurned the offer which had been made, if coupled with the proviso that the aid was to be given to the first road which should reach the State line. I was very particular to note that carefully, and I wrote it down exactly

as he stated it. I was very particular about it, and covered a whole sheet of foolscap with my notes. The question was asked if he would rather he let alone than to have the munificent offer stand, which had been made to his company, coupled with the fact that it was made with that proviso, and he said he would rather the offer should not be made at all. Now I hope that fact will be kept before the Convention.

Mr. McCLINTON. I believe it is generally conceded by gentlemen on this floor that we are not able now to give anything in aid of the Central Pacific Railroad, or any other railroad whatever. I do not believe that we shall be able to give anything before that railroad will reach the State line, with the means it has already at its command; and if the Central Pacific Railroad does not want us to help it afterwards, I shall be very glad of it, because I do not want to give it anything, any way, while we are in our present financial condition.

The question was taken on the amendment proposed by Mr. Haines, and it was not agreed to.

The question recurred on the amendment offered by Mr. Crosman.

Mr. HOVEY asked that it be read again, and it was read by the Secretary.

Mr. HAINES. I cannot possibly vote for that proviso. Why, sir, it seems to me as if gentlemen were crazy and wild, when they cast their votes for a proviso like that, and if we do vote for it we shall regret it a thousand times. I venture to say that if this aid is granted it will all be consumed before the Pacific Railroad ever reaches the summit, and I know that every member here will regret that he ever gave his vote in favor of granting aid to that road before the time of its reaching the Sierra Nevada Mountains.

Mr. FITCH. If the gentleman from Lyon will accept it, I would like to have the rate of interest restricted there, so as not to exceed seven per cent. per annum. I will move, if the gentleman will accept it, to insert these words, in their proper place—"at a rate of interest not exceeding seven per cent. per annum."

Mr. CROSMAN. I accept it, and I wish to say, while I have the floor, that I hope the members of the Convention will keep in view the fact that we are not by this proposition voting any money to any railroad. We are simply reserving this right to the people, as one of their reserved rights, and the question is not upon making the appropriation at all. After the representations which we have heard here on the subject, if I were in the Legislature, and the question were to come up now, I should certainly vote against it. I hope gentlemen will also keep in view the fact that it is provided that the road must reach within twenty-four miles of the summit before any aid can be granted.

Mr. HAINES. Then the assistance granted would not exceed one quarter of the amount appropriated, because they would sell the bonds for not more than twenty cents on the dollar, and it would all be expended outside of this State. It seems to me that gentlemen are voting in favor of a wild-cat financial scheme, when they vote for this amendment, because it is almost impossible now to raise a dollar on our bonds.

The question was taken by yeas and nays upon Mr. Crosman's amendment, as finally modified, and the vote was—yeas, 6; nays, 25—as follows:

Yeas—Messrs. Banks, Crosman, Fitch, Friedl, Hovey, and Warwick—6.

Nays—Messrs. Beatty, Bronson, Chapin, Collins, Crawford, DeLong, Deuprey, Earl, Folsom, Haines, Hawley, Hudson, Kennedy, Kinkead, Lockwood, Mason, McClinton, Parker, Proctor, Sturtevant, Tagliabue, Wetherill, and Mr. President—25.

So the amendment was not agreed to.

Mr. DELONG. I believe the question now recurs upon the passage of the article, and I move that the reading of the entire article be dispensed with, and that it be read by title.

Mr. McCLINTON. If the article passes as it now is before the Convention, will or will not this entire proviso in Section 9 be left out?

The PRESIDENT. That proviso has heretofore been stricken out by the action of the Convention.

The question was taken on the motion by Mr. DeLong, to dispense with the reading of the article in full, and it was agreed to.

The question was stated on the final passage of the article.

Mr. EARL. Is an amendment in order?

The PRESIDENT. No, sir; it is too late now.

The question was taken by yeas and nays on the final passage of the article, which, as previously amended, read as follows:

ARTICLE VIII.

MUNICIPAL AND OTHER CORPORATIONS.

SECTION 1. The Legislature shall pass no special act in any manner relating to corporate powers, except for municipal purposes; but corporations may be formed under general laws; and all such laws may, from time to time, be altered or repealed.

SEC. 2. All real property and possessory rights to the same, as well as personal property in this State, belonging to corporations, now existing or hereafter created, shall be subject to taxation the same as property of individuals; *provided*, that the property of corporations formed for municipal, charitable, religious, or educational purposes may be exempted by law.

SEC. 3. Dues from corporations shall be secured by such means as may be prescribed by law; *provided*, that corporators in corporations formed under the laws of this State shall not be individually liable for the debts or liabilities of such corporations.

SEC. 4. Corporations created by or under the laws of the Territory of Nevada shall be subject to the provisions of such laws until the Legislature shall pass laws regulating the same, in pursuance of the provisions of this Constitution.

SEC. 5. Corporations may sue and be sued in all Courts, in like cases as individuals.

SEC. 6. No bank notes or paper of any kind shall ever be permitted to circulate as money in this State, except the Federal currency and the notes of banks authorized under the laws of Congress.

SEC. 7. No right of way shall be appropriated to the use of any corporation, until full compensation be first made or secured therefor.

Sec. 8. The Legislature shall provide for the organization of cities and towns by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, except for procuring supplies of water.

Sec. 9. The State shall not donate or loan money or its credit, subscribe to or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes.

Sec. 10. No county, city, town, or other municipal corporation shall become a stockholder in any joint stock company, corporation, or association whatever, or loan its credit in aid of any such company, corporation, or association, except railroad corporations, companies, or associations.

The result of the vote was—yeas, 18; nays, 2—as follows:

Yeas—Messrs. Banks, Brady, Brosnan, Chapin, Collins, Crawford, Crosman, DeLong, Dunne, Fitch, Frisbie, Folsom, Haines, Hawley, Hovey, Hudson, Kennedy, Lockwood, Mason, McClinton, Parker, Proctor, Sturtevant, Tagliabue, Wetherill, and Mr. President—26.

Nays—Messrs. Earl and Warwick—2.

So the article was passed.

FINANCE AND STATE DEBT.

Mr. DeLONG. It will be necessary now, having stricken out this railroad appropriation from Article VIII, to amend Article IX. In Section 3 of that article occurs this language:

"*Provided*, that the further amount of indebtedness authorized by Article VIII, of this Constitution, shall be deemed legal and valid whenever said debt shall be incurred in accordance with the provisions therein expressed; and said debts shall be separate and independent of the State debt herein provided for."

I move to recommit Section 3 of Article IX, to the Committee of the Whole, with instructions to strike out the entire proviso which I have read.

The PRESIDENT. Before the motion can be entertained, it will first be necessary to get the article before the Convention.

Mr. DeLONG. I move, then, to take it from the table.

The question was taken, and the motion was agreed to.

Mr. DeLONG. Now I move to recommit Section 3 to the Committee of the Whole, with instructions to strike out all that portion which I have read.

The question was taken, and the motion was agreed to.

IN COMMITTEE OF THE WHOLE.

On motion of Mr. DeLONG, the Convention resolved itself into Committee of the Whole, (the President remaining in the chair,) for the consideration of Section 3, of Article IX, which had been referred to the committee, with special instructions.

Mr. DeLONG. I now move that the Committee of the Whole rise and report the section back to the Convention, and further report that we have stricken out the proviso legalizing the aid to the Pacific Railroad, in accordance with the special instructions of the Convention.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The committee accordingly rose, and the Secretary reported that the Committee of the Whole had, in accordance with the instructions of the Convention, amended Section 3, of Article IX, by striking out the proviso therein contained.

The amendment reported by the Committee of the Whole, was agreed to.

The question being on the third reading and final passage of Article IX, as amended, it was read by the Secretary, as follows:

ARTICLE IX.

FINANCE AND STATE DEBT.

SECTION 1. The fiscal year shall commence January 1st.

SEC. 2. The Legislature shall provide for an annual tax sufficient to defray the estimated expenses of the State for each fiscal year; and whenever the expenses of any year shall exceed the income, the Legislature shall provide for levying a tax sufficient with other sources of income to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

SEC. 3. For the purpose of enabling the State to transact its business upon a cash basis, from its organization, the State may contract public debts; but such debts shall never in the aggregate, exclusive of interest, exceed the sum of three hundred thousand dollars, except for the purpose of defraying expenses, as hereinafter mentioned. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein, and every such law shall provide for levying an annual tax sufficient to pay the interest semi-annually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the State, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect, except in case of money borrowed to repel invasion, suppress insurrection, defend the State in time of war, or if hostilities be threatened, provide for the public defence.

SEC. 4. The State shall never assume the debts of any county, town, city, or other corporation whatever, unless such debts have been created to repel invasion, suppress insurrection, or to provide for the public defence.

The question was taken by yeas and nays on the final passage of the article, and the vote was—yeas, 26; nays, none—as follows:

Yeas—Messrs. Banks, Brosnan, Brady, Chapin, Collins, Crawford, Crosman, DeLong, Dunne, Earl, Fitch, Frisbie, Folsom, Haines, Hawley, Hovey, Hudson, Kennedy, Lockwood, Mason, McClinton, Proctor, Sturtevant, Tagliabue, Wetherill, and Mr. President—26.

Nays—None.

So the article was passed.

TAXATION.

The Convention resumed the consideration of Article X, entitled Taxation, the question being on the final passage of the article.

Mr. STURTEVANT. I move that the Convention adjourn.

The question was taken, and the motion was not agreed to.

Mr. STURTEVANT. I made the motion to

adjourn, hoping that the Convention would consent to adjourn until to-morrow, so as to give us a little time on this matter. I wish to enter my protest, although I do not know as that will help the matter any. I wish to protest against the adoption of this article. I will endeavor to give the Convention some of my reasons. One of my material objections is this—

Mr. DeLONG. I submit that all debate is out of order, unless by leave of the Convention.

Mr. STURTEVANT. What is the objection? You have got this thing all safe.

Mr. DeLONG. It is not that; but the time fixed for the adjournment is nearly up. [Question! Question!]

Mr. STURTEVANT. One of my principal objections to the adoption of this article is, that during the last session of the Legislature there was a certain agreement entered into by you mining representatives, and that agreement was supposed to be sacred. There was an agreement entered into by the representatives of all of you, which you are responsible for, and we are not. ["Oh! Oh!"] Some of these agreements were patriotic, and among them was one to set aside to the volunteers already raised, and to be raised, for the service of the United States, to aid in suppressing the rebellion, a certain amount of money.

Mr. DUNNE. Time! I believe the time is up.

Mr. EARL. I move to extend the time.

Mr. DeLONG. I move to extend it ten minutes.

The question was taken on Mr. DeLong's motion, and the motion was agreed to.

Mr. STURTEVANT. Now if gentlemen will not make more noise than a pack of hounds after a wolf, I will try to finish my remarks. Gentlemen know what this provision is to which I have referred, although some may not have heard me state it on account of the noise. There was an agreement, as I stated before, entered into with a distinct understanding, and I call the attention of the Convention to that matter. The revenue bill, which was passed at the same time, provided the means of carrying out this agreement; and I call attention to another thing, and that is, that this bill making the appropriation for volunteers would not have been passed had not you, through your representatives from the mining counties, agreed with us that the mines should be taxed to raise the money. But now in your wisdom you have seen fit to back down, and in so many words to repudiate your own action, thereby throwing the responsibility and the burden of this tax, all of it that has been incurred, upon the surface property of the Territory. That will be one of my main objections, which I wish to embrace in my protest.

Mr. HAWLEY. I move a call of the House.

The question was taken, and the motion was not agreed to.

Mr. HAINES. I would ask if the Convention cannot be induced to insert the word "gross" in this article, before the word "proceeds?" It is all so very vague now that it ought not to be satisfactory to either side of the House. I think that gentlemen representing the mining interest ought to extend that courtesy, at least, to us who feel deeply wounded in regard to this matter. Money will be used in the Legislature, and we all know for a certainty that it would be possible to convince the Legislature that only the net proceeds are intended here. We all know what a corrupt body a Legislature may be made by the use of money, and a sufficient amount of money used for the purpose may suffice to make them believe that the article means net proceeds, or gross proceeds, or whatever proceeds men may choose to construe it to mean. And in my opinion there is not a possibility, under that provision, of getting a dollar of revenue from that source. I presume that nobody will deny that if money enough is used, the Legislature can be made to say that the provision means "net proceeds," and the consequence will be that we shall never in the world get any revenue from the mines.

Mr. HOVEY. I desire to ask the gentleman a question.

The PRESIDENT. The Chair will suggest that if gentlemen want to get a vote they had better not ask any questions.

Mr. STURTEVANT. I move that Article X be recommitted, with instructions to insert the word "gross" before the word "proceeds."

Mr. FRIZELL. I second the motion; and, Mr. President, as I am a representative of a mining county, I want to say that I do honestly wish that our action on this subject may be reconsidered. I have talked with my brother delegates from the agricultural counties on the subject, and I say we wish and intend that the gross proceeds of the mines shall be taxed. I am informed by pretty nearly all of the members from the agricultural counties, that if we do that they will be satisfied with our action, and that is all we can do. Representing in part the mining constituency of Storey County, I say to those members from the agricultural counties that all we can do is to tax the gross proceeds of the mines. I do not know that I can speak for others, but I will say for myself, that so far as your interests are concerned, gentlemen of the agricultural counties, they are our interests. Our interests are reciprocal, and so far as I am concerned, and I think I may speak also for the remainder of our delegates, we do not wish to deceive you on this subject; and I say if you are willing to vote for that proposition, making it gross proceeds, I am willing to have it done; and if the people are not willing to adopt it when it is amended in that respect, then let them vote it down. I am willing to concede that point.

Mr. HAINES. I certainly do ask it as a favor, so far as I am concerned. I do not want to go home to my constituents and tell them that we can expect no assistance in sustaining the State Government from the vast and enor-

mous amount of wealth which exists in the mining counties of our State. As it now stands, that certainly is the case, because the Legislature will undoubtedly decide that the article means "net proceeds." I have seen those corrupt bodies where money was used, and I know that a sufficient amount of money will always secure a certain result. I hope the Convention will concede that point. Give us that, and we ask no more.

Mr. DeLONG. It is now pretty near the time to adjourn, and as this is a very important question, and some members desire to have a little time to reflect upon it, I will move that we adjourn until to-morrow morning, and then let this matter come up as unfinished business.

The question was taken, and the motion was agreed to.

Accordingly, at twenty minutes before six o'clock, P. M., the Convention adjourned.

FIFTEENTH DAY.

CARSON, July 20, 1864.

The Convention met at nine o'clock, A. M.

On motion of Mr. HAWLEY, the President being temporarily absent, Mr. BANKS was requested to act as President, and took the Chair.

The roll was called and all the members responded except the following: Messrs. Ball, Collins, DeLong, Hudson, Jones, Kennedy, Morse, Nourse, Parker, Proctor, Wellington, Williams, and Mr. President. Present, 26; absent, 13.

Subsequently Mr. Collins came in, and at his own request was recorded as present.

Prayer was offered by the Rev. Mr. RILEY.

The journal of yesterday was read, corrected, and approved.

On motion of Mr. CRAWFORD, indefinite leave of absence was granted to Mr. Kinkead.

SALARIES.

Mr. FITCH. I move that the Convention now go into Committee of the Whole for the consideration of Article XI, entitled Salaries.

Mr. DUNNE. Would not that require a suspension of the rules, inasmuch as we have other business pending?

Mr. FITCH. We have no business I believe until eleven o'clock—the time for the special order.

The PRESIDENT *pro tem.* The next order of business is the general file.

Mr. FITCH. I find I am mistaken as to the special order, and yet I know that there is an impression among the members of the Convention that the mining tax amendment was made the special order for to-day at eleven o'clock. However, I do not wish to press my motion at all. I would like to have Article XI considered as soon as possible, as I wish to get some amendments before the Convention, and therefore I have made this motion, under the head of motions and resolutions, to go into Committee of the Whole upon that article, and I will leave it to the Convention.

The question was stated on the motion of Mr. Fitch.

Mr. TAGLIABUE. Does not that involve a suspension of the rules, requiring a two-thirds vote?

The PRESIDENT *pro tem.* The Chair is of opinion that it does, because it involves the order of business.

Mr. FITCH. Then I will move a suspension of the rules for that purpose; but if the Convention do not wish to consider the article now, I shall not care to press the motion.

The question was taken, and upon a division the vote was—ayes, 13; noes, 10—so the rules were not suspended, less than two-thirds of the Convention having voted affirmatively.

TAXATION.

The Convention took up, as the unfinished business on the general file, Article X, entitled Taxation.

Mr. HAINES. I was under the impression that that article had been made a special order for 11 o'clock. I think the gentleman from Ormsby, (Mr. Johnson,) our President, made such a motion yesterday.

Mr. FITCH. I suggest that the article had better be postponed until eleven o'clock. I know that several members who are now absent would like to be here when it is considered, and they are under the impression that it has been made a special order. I move that it be postponed until eleven o'clock.

The question was taken, and upon a division the motion was agreed to—ayes, 16; noes, 7.

SALARIES.

Mr. DUNNE. I move now that the Convention go into Committee of the Whole, the President remaining in the Chair, for the purpose of considering Article XI, entitled Salaries.

The question was taken, and the motion was agreed to.

IN COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (the President *pro tem.* remaining in the Chair,) and took up Article XI, entitled Salaries.

The SECRETARY read the article, as follows:

ARTICLE XI.

SALARIES.

SECTION 1. The Governor shall receive an annual salary of six thousand dollars. The Secretary of State shall receive an annual salary of four thousand dollars. The State Controller shall receive an annual salary of four thousand dollars. The State Treasurer shall receive an annual salary of four thousand dollars. The Attorney General shall receive an annual salary of eighteen hundred dollars. The Superintendent of Public Instruction shall receive an annual salary of two thousand dollars. Such salaries shall be paid quarterly. Said officers shall receive no fees or perquisites to their own use for the performance of any duties connected with their offices.

Mr. FITCH. I offer a substitute for that article.

The SECRETARY read the substitute proposed by Mr. Fitch, as follows:

ARTICLE XI.

SALARIES AND APPROPRIATIONS.

SECTION 1. For the first ——— years succeeding the formation of a State Government, the salary of the Governor shall not exceed —— dollars per annum; the salary of the Secretary of State shall not exceed —— dollars per annum; the salary of the State Controller shall not exceed —— dollars per annum; the salary of the State Treasurer shall not exceed —— dollars per annum; the salary of the Surveyor General shall not exceed —— dollars per annum; the salary of the Attorney General shall not exceed —— dollars per annum; the salary of the Superintendent of Public Instruction shall not exceed —— dollars per annum; the salary of each Judge of the Supreme Court shall not exceed —— dollars per annum; the pay of State Senators and members of the Assembly shall not exceed the sum of —— dollars for each day of actual service, and —— per mile for mileage.

SEC. 2. For the first ——— years succeeding the formation of a State Government, the Legislature shall not appropriate more than the sum of —— dollars per annum for the support of the State Prison, nor more than —— dollars per annum for the support of Common Schools, nor more than —— dollars per annum for Public Printing, nor more than —— dollars per annum for the payment of the interest on the public debt, nor more than —— dollars per annum for the contingent expenses of all the departments of Government. The whole amount appropriated by the Legislature for the support of the State Government for the first ——— years succeeding the formation of said government shall not exceed the sum of —— dollars per annum.

SEC. 3. For the first ——— years succeeding the formation of a State Government the Legislature shall make no appropriation for the erection of public buildings, and the annual tax levied by the Legislature for the support of a State Government shall not for the first ——— years succeeding the formation of a State Government, exceed the sum of ——— upon each one hundred dollars of taxable property at the assessed valuation of the same.

Mr. FITCH. I have offered this substitute more with the view of calling out the opinions of members upon the advisability of the course there suggested, than with any expectation that, without considerable amendment, the proposition will pass. As a general principle I am opposed to restricting the State Legislature in an organic law, in the manner proposed in this article, for I do not consider it altogether good policy to tie up a legislative body to that extent. But we cannot be oblivious to the fact that there is the nucleus of a very strong opposition to the Constitution now existing, that it is active and energetic, and that a very great effort is likely to be made to defeat the acceptance of the Constitution, to defeat the adoption by the people of a State Government, on the ground of its cost. The parties about to oppose the ratification of the Constitution say that the Territory is in no condition to afford the expense; that a State Government will cost a large sum of money; that to adopt it will necessitate the levying of a large amount of taxes; and that the people are too poor, in the present condition of our affairs, to undergo the expenses which will be involved. Now when the last Constitution was submitted to the people the same arguments were used. The salaries were limited in that instrument, but those who opposed it said with great force that the salaries of the State officers constituted but a mere drop in the bucket, and the great items of expense in a State organization would be the appropriations. Now I desire that this Convention shall, if practicable, remove that ground of opposition, by tying up the Legislature for a period of years in respect to appropriations—that is, to prohibit them from exceeding a certain amount of expenditure for the first few years after the adoption of a State form of government. If we can do that, and especially if we can adopt this last clause relative to the rate of taxation, (and that is a mere experimental clause, I admit, and I have some doubt respecting its practicability,) we shall have done much to strengthen the Constitution before the people by removing the most important ground of opposition. I have conversed with a number of my fellow-citizens in Storey County, some of whom are most active in the opposition—whose names are now mentioned most prominently in the opposition to a State Government—and they have informed me that if the Convention can and will so tie up the Legislature, for the first two or three years, that it will be impossible for them to spend more than a reasonable sum for a State Government, they are ready and willing to withdraw their opposition. I have offered this substitute, with blanks unfilled, merely for the purpose of getting at the views of members of the Convention on the subject.

Mr. JOHNSON. I think the gentleman's proposition is deficient in one respect. He should have had an additional section there, and I am surprised that he did not incorporate it, providing that after the first blank years the Legislature shall not convene at all. Then his system would have been complete. Now, sir, on this floor, and more outside of this Convention, I have heard objections urged to the old Constitution on the ground that it contained so much legislation that it left nothing for the Legislature to do. I think that even without the additional section, which I have suggested to carry out the principle embodied in the gentleman's proposition, there would be more cause for complaint against this Constitution, if this substitute should be adopted, on the ground of its restriction of the legislative power—of the power of the people through their Legislature—than could be found in any single article or provision embodied in the old Constitution. And, sir, of all propositions which have emanated from any gentleman on this floor, of an extraordinary character, I think the one offered now by the gentleman from Storey, contains the most extraordinary features.

In the first place, I am willing to go further, probably, than some gentlemen on this floor, judging by the expressions of opinion which I have heard on the subject, in the establishment of salaries. I would be willing, so far as salaries are concerned, to fix them, for a period of time,

beyond the power of the Legislature to change them. Beyond that I am not willing to go, and beyond that, perhaps, the majority of this Convention is not willing to go. When we have done that, I conceive that we shall have done all that is legitimately and properly within the scope of our powers.

Now I desire for a moment to refer to some of the peculiar features of this amendment. Passing over the question of the salaries of the various officers—for they are all left blank, and I do not find any especial objection to that part of the gentleman's proposition—we come next to this clause:

"For the first —— years succeeding the formation of a State Government, the Legislature shall not appropriate more than the sum of —— dollars per annum for the support of the State Prison."

How does the gentleman know, or how can he conceive, what the expenses of the State Prison will be? Can the embodied wisdom of the Legislature approximate to what the necessary expenses of that institution will be? There may be other gentlemen here who are better acquainted with this question than I am, but who can foretell what may in the future be the action of our Courts, or how many or how few criminals will be sentenced to the State Prison, for whom accommodations are to be provided? No one can predict what will be the number of convicts at any future period, although we know the number already there, and it is impossible for any one to more than conjecture what will be the amount of the future expenses of that institution.

Next, the proposed amendment says:

"Nor more than —— dollars per annum for the support of common schools."

Well, I would commend that part of it to the careful attention of the gentleman from Storey, (Mr. Collins,) who is the Chairman of the Committee on Education. Probably he may have considered this matter already, for I know that no member of the Convention has given more earnest thought and considerate attention to the common school system, either as to its present or its prospective condition, than he has. If he cannot form an estimate as to the amount which the public schools will call for from the State Treasury, I cannot, and I do not believe the members of this Convention can.

"Nor more than —— dollars per annum for the public printing."

Well, the gentleman from Storey, (Mr. Fitch,) as he has been connected with that art, may possibly be able to conjecture what amount would be proper to allow for the printing, and possibly any of us might be able to approximate to an estimate on the subject of the public printing.

"Nor more than —— dollars per annum for the payment of the interest on the public debt."

On that subject there is a variety of opinions, but possibly we might approximate very nearly to the amount which will be required each year for the payment of the interest on the public debt. But upon all these matters, those embraced in the last clause, and in the preceding and succeeding clauses, I apprehend that no gentleman on the floor of this Convention will assume any other position than this, that whatever is absolutely necessary should be appropriated and no more. Whatever amount may be necessary, in each case, let the Legislature appropriate. But who are to be the judges? Are we, in advance, to fix the appropriations for two or three years? I say not. Let the Legislature ascertain what is necessary, and then appropriate it. It is incumbent upon us to make provision here investing the Legislature with the power, and devolving upon it the duty, of making the necessary appropriations, at the proper time; for all these expenses have to be borne, be they five thousand, ten thousand, twenty thousand, fifty thousand, or even a million of dollars a year. Whatever they are, more or less, they have to be borne, and paid by the people of the State. The same remark applies to all these specifications. We know what the bonded debt of the Territory is at the present time, but we cannot know what will be the condition of our indebtedness when the State Government shall take the place of the Territorial Government, although we may approximate to an estimate. But with reference to some of these other items specified here, we cannot even approximate to an estimate.

"Nor more than —— dollars per annum for the contingent expenses of all the departments of Government."

Where is the man who can speak from knowledge and experience in these matters, and come sufficiently near to making an estimate of these contingent expenses, to warrant us in fixing the amount in the Constitution? We can approximate to an estimate sufficiently near to judge of what will be the probable aggregate amount of the expenses, generally speaking, of the Government; but even upon that, judging from the different opinions which I have heard on this floor and elsewhere, I am of opinion that our conclusions would be exceedingly variant. I have heretofore indicated what my judgment is on that point, and generally the proposition at that time seemed to meet with no denial, although I subsequently heard gentlemen name figures far below any estimates which I could make, upon the most economical and judicious system we can possibly devise.

Next, we have this:

"The whole amount appropriated by the Legislature for the support of the State Government, for the first —— years succeeding the formation of the State Government, shall not exceed the sum of —— dollars per annum."

Now, sir, this is, of all the propositions I have heard suggested in this Convention—the gentleman from Storey will pardon the term I must use in connection with it—of all the propositions which have emanated from any member or members of the Convention, this is the

most absurd—I must use that term—which I have yet heard suggested.

Now we come to Section 3.

Sec. 3. For the first —— years succeeding the formation of a State Government, the Legislature shall make no appropriation for the erection of public buildings, and the annual tax levied by the Legislature for the support of a State Government shall not for the first —— years succeeding the formation of a State Government, exceed the sum of —— upon each one hundred dollars of the taxable property at the assessed valuation of the same.

This is entirely in keeping with that which precedes it. As to this matter of public buildings, I care nothing. Considerations of delicacy might inhibit me from discussing that point, and I do not propose to say anything upon it. But I say there is nothing in this section which should find a place in our fundamental law, save and except, perhaps, that inhibition in respect to the erection of public buildings, and if it is the wish of the Convention to insert that, I shall care nothing for it.

Now as to salaries, we might, as I have suggested, fix them for a period of time, and possibly I might be willing to go further, and establish them for a longer time than some other gentlemen might. But as to the balance of this proposition, it is impossible for us, in my judgment, to make any estimates that will correspond with the future wants of the State. In some cases we might exceed, and in others we should be apt to fall short of the wants of the government. The same remarks will apply to all these sections, and every specification, from beginning to end, except those to which I have referred. The gentleman desires an expression of the sense of the Convention, I understand, on the policy of this substitute, and I will only say, that if his system is to be adopted, I do earnestly beseech gentlemen to carry it out by an additional section, providing that after —— years the Legislature shall not convene at all. That would simply be resolving this Convention into a Legislature for the State, for one, two, or three years, and it would be better to do that, so that the people might know not only what expenses they have to incur, but also what laws are enacted, and then they can judge of the merits of the system we devise, as compared with their Territorial Government. Let us carry out the system to its utmost limits, if we adopt it at all, and make it practicable. Let the people know what expenses they have to meet, and what laws they will have to endure during this entire period, long or short, as it may be.

Mr. FITCH. I entirely agree with my friend from Ormsby (Mr. Johnson) in regard to the theory upon which he bases some portion of his opposition to the amendment suggested by me, and I entirely disagree with some other portions of his remarks. I think I stated distinctly—and if I did not, I will state it now—that the theory of tying up the hands of the Legislature in the manner proposed by this amendment, is not agreeable to me or consonant with my ideas of sound public policy. I believe the largest amount of discretion should be left to the Legislature, as a general proposition. But this measure ties them up only for a limited period. I have left that period blank, so that we can insert one, two, or three years, just as to the Convention may seem most proper. I have offered it as a question of expediency solely, I confess. I think the principle is one which should not be incorporated into the Constitution to continue for any great length of time. But perhaps this little evil may be done, in order that a great good may come of it; and I believe that it will very materially aid in securing the adoption of the Constitution. As I have stated heretofore, my first object is to secure a good fundamental law, and next, to aid in so shaping the policy of this Convention, that that fundamental law will be adopted by the people. We sit here in this Convention, all of us, with one exception perhaps, in favor of the adoption of a State Government. We go out into this thriving city, filled with inhabitants who indulge in the hope that it will be the capital of a great and prosperous State, and we hear many people saying that they are in favor of the adoption of the Constitution. And at night we go to bed imbued with the idea that we are the people of this Territory. Now, Mr. President, we are no such thing; and I strongly believe that unless we adopt some such provision as this, tying up the Legislature, so that for two or three years to come, the expenses cannot exceed a limited sum per annum, the trump of doom against this Constitution has already sounded. I think the great County of Storey, which cast as large a vote in proportion to its population, against the old Constitution, as any county except Humboldt, the county that holds the balance of power, by which can be secured either the adoption or the rejection of the Constitution, will be against it. I believe, after having been there for two days, after conversing with lawyers, merchants, and miners, endeavoring to obtain the true sentiments of the people, that two-thirds, if not three-fourths of the people of that county are opposed to the adoption of the Constitution, to-day; and I believe, further, that the only measure by which their votes can be secured, is the adoption by us of an inhibition similar in character to the one I have proposed, against a large amount of taxation. The people are afraid of the Legislature. I agree with the gentleman from Ormsby (Mr. Johnson,) that we could safely leave the matter with the Legislature, and if we did so, I believe that they would be guided by their knowledge of the resources of the State, by the amount of taxable property, and their knowledge of what the people could really stand. I believe they would so shape their appropriations as to cover no more than the proper amount, and raise only a reasonable sum for the State Government. But although I believe all this, yet you cannot make the people believe it. They have

the example of California held up as a warning light to keep them off the breakers; and as soon as we leave this Convention, we shall find men on every stump telling the people of the enormous taxes that will have to be raised; that the State Government of California costs millions of dollars, and that they will be required to pay an enormous tax for revenue. And if we simply restrict the salaries of State officers, they will tell the people, and what is worse, the people will believe them, that the salaries are merely a drop in the bucket, and that the Legislature can make the most extravagant appropriations. And because of their telling the people this, and the people believing it, they will vote against your Constitution. Now the only way in which we can secure the vote of the people and spike the guns of our adversaries, is by an inhibition of the nature which I have proposed.

I do not agree with the gentleman from Ormsby (Mr. Johnson) in another point, and that is, that we cannot estimate the amount of the appropriations which will be necessary. I admit that whatever is required should be provided for, and that this restriction is legislation, but I believe that we can approximate at least to the maximum sum which will be required for the next two years. We can tell how much the State Prison and how much the Common Schools are going to cost us. We can tell how much the State Printing will cost us, and all the other usual expenses of administration. We know how much they have cost, under the Territorial Government, and for the first two years, at least, we can fix a maximum sum, and say that they shall not cost an amount to exceed that. It was very properly said by the gentleman from Ormsby that we cannot foretell what will be the expense of the State Prison—that we cannot know beforehand how many convicts there will be, and how much will be required to support them. But we can fix the maximum sum. The expenses of the State Prison are now about fifteen thousand dollars a year, and we can fix the maximum of the appropriation at forty thousand, or fifty thousand dollars, if you please, or at all events we can name some specific sum which shall not be exceeded. In that manner we can meet the arguments of those who are about to oppose the State Government. We can refer them to Article XI, of the Constitution, and say in answer to their allusions to the extravagancies of the State of California, and the warning that State affords, and all their arguments and figures upon that basis, that our State Government cannot cost more than a certain sum, because for a period of years the Legislature is limited, and cannot exceed that sum in expenditure. Now while I agree with the gentleman from Ormsby in strongly doubting, and in fact in absolutely disbelieving, in the theory of tying up the hands of the State Legislature, yet I submit whether, as a question of expediency, it is not better to do so in this case, and for a limited period, in order to secure the adoption of a State Government.

Mr. EARL. So far as the question of expediency is concerned, I have been, for one, in favor of leaving to the Legislature certain powers, but upon inquiry on certain matters I find it does not always do to leave the Legislature with full and unrestricted powers. In relation to the State Prison, I think that is one of those things, in regard to which it is entirely proper to restrict the Legislature, although it might, in another view of the question, seem to be impracticable to do so. But we have only to look back to the history of California, and see what the State Prison cost that State in the days of Estelle, and the notorious prison contractors, about whom there has been so much legislation and litigation, to learn a lesson of wisdom. And again, here in this Territory, look at that pile of rocks within sight of this building, which has already cost the Territory eighty thousand dollars. Until yesterday I knew nothing of the particulars of that matter, and if I had I would never have preached here the doctrine of allowing the Legislature to have that unrestricted power. In relation to the officers of the State, I do believe in tying up the hands of the Legislature, in the manner set forth in this proposition. We can and should name a sum which the Legislature is not to exceed. For instance, we can say that they shall not exceed eight thousand dollars, if you please, for each of the Supreme Court Judges, and five thousand dollars for the Governor, and so on. I think that is entirely consistent. Give the Legislature sufficiently wide boundaries, but say to them that inside of those boundaries they must keep. That is one of the great systematic principles which we ought to lay down here for the State to be guided by. I think we can do it, and do it consistently. There is no doubt at all in my mind but that our friend from Storey (Mr. Collins) can make a sufficiently accurate calculation in regard to the cost of the schools. Let the estimate be a liberal one. We are all capable of figuring it out here, and then let us leave a proper margin. I shall go for the proposition of my colleague first, last, and all the time, and especially in relation to the penitentiary. I think the Legislature should be restricted in respect to that institution, if not in regard to anything else.

Mr. NOURSE. I have an amendment to offer, which perhaps the gentleman from Storey will accept. The gentleman suggests that the expenses of the penitentiary should be limited, and I believe so too. It has been argued here that possibly if the number of persons convicted of crime should be greater than we might estimate, the amount fixed upon might not be sufficient for their support, and in order to provide for that difficulty I send up this amendment.

[The PRESIDENT in the Chair.]

Mr. FITCH. My amendment is a mere skeleton anyhow—none of the blanks being filled.

Mr. NOURSE. I know; but the amendment I offer is, I think, an important one. As the object of the gentleman's proposition seems to be to adopt a stump speech to send before the people, in order to remove what objections they may have against the Constitution, it seems to me that the further amendment which I propose is necessary.

The SECRETARY read Mr. Nourse's amendment, as follows:

"That no more than ——— persons shall commit crime within this State within ——— years, nor shall more than ——— persons be convicted of crime and sentenced to the State Prison within ——— years from the adoption of this Constitution."

The CHAIRMAN. The amendment is out of order.

Mr. FITCH. Gentlemen seem disposed to amuse themselves with this proposition, but I have offered it in good faith, and I trust it will receive fair consideration. If the Convention does not desire to adopt it, let it be rejected.

Mr. BANKS. I can appreciate neither the wit nor the sarcasm which have been dealt out in relation to this amendment. I understand that the proposition is only a skeleton, which the gentleman from Storey has offered, embodying a certain policy, and presented in this form for us to act upon, and in case we adopt it to perfect it in its details as we may think proper. Now in order that we may act intelligently upon it, I suggest that we have a division of the question, so that if we see fit we can strike out Article XI, and then incorporate so many of the propositions of the gentleman from Storey as we think best. In that way we will be able to confine the discussion to the particular points upon which we wish to act directly. There are some portions of the amendment of the gentleman from Storey which I think will meet the approbation of the majority of the Convention, as they certainly do mine. I do not see anything in this Section 1 of the original article that so corresponds in its nature with any portion of the substitute as to justify moving an amendment to that section, and I think the better course would be to take the question first on striking out Section 1. I therefore call for a division of the question—first, on the motion to strike out, and then on the insertion of these several sections, in their order, as proposed by the gentleman from Storey.

The CHAIRMAN. I will suggest here, in order that we may get this matter in a proper shape, that the various amendments, taken in the aggregate, must be regarded as an amendment to Section 1 as it stands now; and the vote should therefore first be taken on the several amendments, in order to perfect them, before the vote on striking out.

Mr. BANKS. I understand the gentleman to move his entire proposition as a substitute—to strike out Article XI entirely, and insert the several sections he has offered.

Mr. FITCH. Under the ruling of the Chair, I will withdraw the substitute for the present.

Mr. BANKS. Then for the purpose of getting at the matter properly, I move to strike out the original section.

Mr. CHAPIN. I am in favor of striking out this section, and I have some reasons to present for striking it out, in order that a proper substitute may be inserted. During my absence from the capital for two or three days past, I conversed as extensively as I could with citizens of every class and standing in society, in my county, and I do not hesitate to state here that in Storey County, if the vote were taken to-day, with the present impression upon the minds of the people, it would be largely against the Constitution. Their fear is, that the expenses of the State Government will be rolled up to an enormous amount, and I think that nothing under heaven can save the Constitution but the assurance of a safeguard thrown around the Legislature, so as to limit them in the amount of their expenditures for two or three years to come, until we shall have recovered somewhat from the depression and hard times under which we are now suffering. As much as we may boast of the wisdom of the Legislature—and I have been anxious to leave a great many things to the Legislature which I felt were not proper to be incorporated in this fundamental law—as much as we may say we are willing to trust the Legislature, the people are afraid of it. Most of them are Californians, and they have had experience in California Legislatures. The Legislatures of that State have been made up from year to year—in its early days, at all events—of men who did not expect to remain in the country more than twelve or fourteen months perhaps, at the most, and I regret to say that many of them were found ready to mortgage the whole State, at any time, for some grand swindling operation, by which they and their friends might be benefited. Now how much we differ in our circumstances from that State in its early days, I cannot state, or at least I will not state; but I will give it as my impression, that for a year or two to come we will have a great many members of our Legislature who will not be permanent citizens. A portion of them will be our best men—farmers and ranchers, and men who have settled here permanently—but is it not reasonably to be expected that another and a large portion of them will be of the same class as those who have dishonored the Legislature of California?—men who are transient residents here, men who have no abiding interests among us, but who desire only to make money, to grasp all they can get, and then to go where they please. At all events, such is the impression of citizens outside of the Convention; certainly it is the impression of the citizens in Storey County. You cannot argue them out of it, and the only thing we can do is to satisfy them that under our Constitution they cannot be ruinously run into debt. If we can do that the Constitution will be carried. I submit whether it is not important for us to go down to the bed rock at once, and lay such a foundation for the State Government, that all will say

they are willing to risk it? For one, I am willing to do it. I do not want to adopt the Constitution, unless we can keep out of debt. I do not want to adopt it, and then follow in the footsteps of California. If we do not want to have the ruinous taxation of California, then I say let us adopt some such safeguard, and if not, we had better stay as we are. I do not want to see the State run into debt, simply because we have assumed the responsibilities of a State Government. Wherefore should we branch out, and go into extravagant splurges, simply because we have assumed the dignity and privileges of a State? I see no reason in that. On the contrary, I believe it is our bounden duty to exercise the closest economy within our power—just as much as we would as a Territory—for two or three years to come at least, and unless we do it, we who expect to remain permanently here will soon find ourselves groaning under burdens which we shall wish never had come upon us. I say, let us take such action as shall secure us against this extravagance, and then we may go along prosperously.

The question was taken on the motion of Mr. Banks to strike out Article XI, and it was agreed to.

Mr. CHAPIN. Now I move that the committee rise, for the purpose of then submitting a motion to refer this matter to a committee of seven, in order to perfect its details. Otherwise it must consume a great deal of time.

Mr. COLLINS. I do not know but the proposition of my friend on my left (Mr. Chapin) is a good one. But this matter will have to be ventilated in the Convention, let it come from a committee of seven or from any other source, and I do not see any better time for us to measure this whole subject than now, in Committee of the Whole. It is one upon which there is a great diversity of sentiment in the Convention, and out of it. I have made up my own mind, most thoroughly, that if we cannot devise the ways and means, if we cannot mature and adopt some plan upon which we can organize this State Government, upon principles of the most rigid economy, by which we can put the brakes upon that system of extravagance with which our people, who have mostly come from California, have been vaccinated, and which will tend in its operation to duplicate the same system of extravagance in this State that has prevailed there,—I say for one I do not want a State Government, and I say for one that a State Government cannot be afforded in Nevada. The people of this Territory are suspicious that the same system of operations which has prevailed in California will characterise the future operations of this coming State. Our people have, financially speaking, the most extraordinary notions. The whole system under which we live has conspired to produce them, and it will require most stringent measures on the part of this Convention, in organizing a State Government, to bring the State down to that economical system which characterizes men in their individual capacity, and which ought to characterise the State in its assembled capacity. I rejoice in one thing in connection with the hard times which are now upon us, for I do regard these times as the most auspicious possible for launching a State Government. Because now, when we create an office, we shall scrutinize well the importance and value of it, and when we fix a salary we shall begin to count the cents in the dollar and the value in the cent. And the sooner we come down to that system, the better for us. I know it is hard for those who have been brought up under a different system. I know it is difficult for those brought up under the operations of that system which has so long borne sway in California, and which has almost, I was going to say, bankrupted that State, to bring themselves down to a system of cheap simplicity. But I tell you, Mr. President, that a cheap government is a premium on political integrity, and just in proportion as you give way to extravagance, and the squandering of money, just in that proportion do you open up a field for corrupt political combinations, and lobbying influences, like those which have been so long known in the State west of us, and which will bear ruinously upon the permanent tax-payers of the State of Nevada. I hope, therefore, that we shall go on with the consideration of this subject in the Committee of the Whole, and let the views of gentlemen be presented upon it. I do not know what the views of members may be, or whether it would be proper to refer the subject to a select committee. There may be great hostility to it. When gentlemen have expressed their opinions we may find it impracticable to refer it, and may decide to indefinitely postpone the whole subject. Let us measure our respective views here. Let us throw them into the common treasury, and when we have ascertained what the desires and wishes of the Convention are, if we find that we are generally in favor of organizing a cheap State Government, let us then refer the matter to a committee, to be there digested.

Mr. BANKS. It has been suggested that the action of the Convention should be to refer this matter to a special committee at the present time. Now I would like, before the Convention acts finally upon the amendment, to have it referred to a committee, but I think it well for us first in the Convention, or in Committee of the Whole, to determine as proposed by the gentleman from Storey, (Mr. Fitch,) what we will restrict legislation upon. I think the sense of the Convention is decidedly in favor of restricting and limiting the Legislature, at least so far as salaries are concerned, but there might be material differences of opinion in regard to the other propositions contained in the substitute. I hope, therefore, that we shall continue in Committee of the Whole, confining ourselves to the matter of the subjects of limitation, and then afterwards we can refer the proposition to

a committee, to procure the facts and prepare the figures upon which to base the necessary action.

Mr. EARL. I hope the suggestion of the gentleman from Humboldt (Mr. Banks) will be agreed to. We can adopt in blank certain sections, making these restrictions, and after that it will be wholly a question of figures, and it seems to me unnecessary for the whole Convention to sit here and deliberate upon questions of figures only.

Mr. FITCH. I think the course suggested by the gentleman from Humboldt is the best we can adopt. We can take up Section 1 and discuss it, and if it is the sense of the Convention to restrict the Legislature in that particular, we can refer it to a committee to fill the blanks, and so on with the remaining sections.

Mr. CHAPIN. For the purpose of getting at the sense of the Convention, then, I will withdraw my motion that the committee rise.

Mr. FITCH. I trust that a vote will be taken in the committee on Section 1.

The CHAIRMAN. The gentleman has withdrawn his amendment, but it will be in order to offer it again.

Mr. FITCH. I will renew the amendment, and I trust that Section 1 will be read and passed upon.

The SECRETARY read Section 1 of the substitute proposed by Mr. Fitch.

Mr. LOCKWOOD. I think the compensation of the Legislature is already fixed, elsewhere in the Constitution. The pay of Senators and Representatives is fixed at ten dollars a day, I think.

The CHAIRMAN. No, sir. It is provided that the Legislature may establish the compensation, and there is to be no increase during the term of the incumbents. No specific sum has been mentioned in the Constitution, so far as already adopted.

Mr. BROSNAN. I call the attention of the Convention to Section 24 of the article entitled Legislative Department, which reads as follows—

The CHAIRMAN. The gentleman had better let the Secretary read it as engrossed.

The SECRETARY read as follows:

SEC. 29. The members of the Legislature shall receive for their services a compensation to be fixed by law, and paid out of the public treasury; but no increase of such compensation shall take effect during the term for which the members of either House shall have been elected; *provided*, that an appropriation may be made for the payment of such actual expenses as the members of the Legislature may incur for postage, express charges, newspapers, and stationery, not exceeding the sum of sixty dollars, for any general or special session, to each member; *and furthermore provided*, that the Speaker of the Assembly, and Lieutenant Governor, or President of the Senate, shall each, during the time of their actual attendance as such presiding officers, receive an additional allowance of two dollars per diem.

Mr. BANKS. It will be observed that there is nothing incompatible between the section as proposed, and the restrictions contained in the section in this article which we have already passed upon. In the amendment which we now have under consideration, the Legislature fixes the salary, but subject, of course, to the proposition made by the gentleman from Storey, (Mr. Fitch,) if we shall choose to adopt it.

Mr. FITCH. I hope the section will be adopted, and then we can report it back, and in the Convention can appoint a committee to to fill all the blanks.

Mr. BROSNAN. I have no objection to this section, except that it seems to me misplaced where it is now. It fixes the salaries for two years, I believe.

The CHAIRMAN. No, sir; they are all blank, yet; but the blanks can be filled at any time.

Mr. NOURSE. This first section refers to the salaries of State officers, I believe.

Mr. FITCH. Yes, sir.

Mr. NOURSE. Well, I do not know as I have any objection to that, nor to the bulk of this proposition. I have a great deal of confidence in the Legislature, provided their hands are pretty well tied, and it seems to me that this proposition, in its general scope, gets at the correct doctrine on that subject. The objection to a Constitution, so far as interfering with legislation goes, it appears to me, has no weight, except when the Constitution undertakes to do affirmative acts, which should be left to the Legislature. But the chief object of a Constitution seems to be to restrict the Legislature from doing affirmative acts which might be harmful to the people, and this provision simply restricts the Legislature in that respect. And now I wish to say, although it is not strictly in order, in regard to that amendment proposed by me, that I offered it in terrible earnest, [laughter,] because that was a class of cases, the extent of which, in the way of expenditure, could not be foreseen, by any possibility.

The CHAIRMAN. It is not in order to speak of a proposition which is not before the Committee.

Mr. NOURSE. Very well. I wish to say, so far as this amendment proposes to restrict expenditures, so far as it proposes to restrict the Legislature from putting us to improper and unbounded expense, I like the proposition; and I shall therefore vote for the first section. I think it is a proper restriction. I do not vote for it as an argument in favor of a State Government, but because I think it is right that in this matter the Legislature should be restricted. It seems to me that that is a strong and sound argument in favor of the section. But when it comes to restricting the Legislature in its expenditures for certain purposes, for which the amount that will be needed cannot by any possibility be foreseen, I shall of course reserve to myself the right to vote against it.

The question was taken on the adoption of the section, and it was adopted.

Mr. FITCH. I now move the adoption of Section 2.

The SECRETARY read Section 2 of Mr. Fitch's substitute, and the question was stated on its adoption.

Mr. BANKS. I understand that these sections are being separately introduced from time to time.

The CHAIRMAN. Yes, sir; each section is offered and voted upon in its consecutive order, as I understand.

Mr. BANKS. Very well, sir. Now in that section there are some things of which, with my present knowledge of the matter, I approve, but there are others that I think are very questionable as matters of State policy, and therefore I ask a division of the question, that the vote may be taken separately upon each of the several items.

Mr. STURTEVANT. The gentleman had better move to strike out.

Mr. NOURSE. Allow me to make a suggestion, which is, I think, a capital one, and that is, that the best way to restrict the appropriations, and to prevent the expenditure of an unreasonable amount of money by the Legislature, is to make the legislative expenditures the last item. The Legislature will then take mighty good care not to run up the items which precede their own compensation to a very extravagant amount. It strikes me very favorably, certainly, and I think there is no better way to secure economy in the State Government than to make the legislative pay the last item.

Mr. FITCH. Was the gentleman ever in California during the days of the transfer of the Swamp Land fund?

Mr. NOURSE. I have only been through that State; I did not tarry.

Mr. BANKS. For the sake of practical convenience I simply ask for a division, and then we can vote on each subdivision of the section as it occurs.

The CHAIRMAN. There being no objection, the section will be divided in the manner indicated by the gentleman from Humboldt, and the question now will be on the first subdivision.

The SECRETARY read the first subdivision, as follows:

"For the first ——— years succeeding the formation of a State Government, the Legislature shall not appropriate more than the sum of ——— dollars per annum for the support of the State Prison."

Mr. FITCH. Here is something which has been handed to me, and I will ask that it be read for information. I am inclined to like it very well. It is designed as a substitute for Section 2.

The SECRETARY read as follows:

SECTION 2. For the first two years after the adoption of this Constitution, the Legislature shall not levy a tax for State purposes exceeding one per cent. on the taxable property of the State, nor shall any appropriation be made exceeding the said revenue, paying—first, the interest on the State bonds; second, salaries of State officers; third, State Prison expenses; fourth, educational appropriations; fifth, Legislative expenses.

Mr. BANKS. I am some how or other very much inclined to approve of that. I have seen in my experience the working of a similar provision, the result of which was very favorable. We have a case in point in the city of San Francisco, where the expenditures previous to 1856 were enormous beyond all reason, but the Legislature of California adopted a provision similar to this, in regard to the amount of taxes that might be assessed and collected, and the result was just this, that the legislative body of that city was forced to confine itself within a given expenditure, and they did so not only without difficulty, but with perfect facility. It is true the amount was exceedingly, even parsimoniously small, but yet, like persons similarly situated in private life, they have managed to get along with the amount of revenue they had. They did not live beyond their means. And I like, too, the order in which this is arranged. Now, sir, the gentleman from Storey (Mr. DeLong) has alluded, in a low tone of voice, to the condition of legislators here at the capital under certain circumstances, but in answer to that suggestion I will say that those gentlemen have a perfect right to stay at home if they prefer it, and if they do come to the Legislature they do so with a full knowledge of their own financial condition, and that of the State, and the probable amount of revenue at their disposal. They will not be deceived in the matter. They will not come here expecting to find an overflowing treasury, from which they can at once receive their pay, but they will come here with a full knowledge of the fact that they will not receive their pay for some time after they arrive, and they can, if they please, exercise their constitutional privilege of staying at home. I think the provision would result in securing a wiser, more economical, and more honest set of men in the Legislature. With my present view of the subject I think the provision is an admirable one. I think it will cover all the ground of the first proposition of the gentleman from Storey, (Mr. Fitch,)—that it will accomplish all the results which he hopes to secure, and that it will do so in a clear, tangible manner.

Now, sir, one word in regard to the matter of the popularity of this Constitution. Thus far I have voted on every proposition coming before us here, without reference to any pressure resulting from the popular sentiment on this or other matters. I came here to adopt a good Constitution, such as the people ought to support, and I regard it as one of the essential elements of a good Constitution, that it shall contain restrictions compelling economy. I have seen and know something of legislative bodies, and without wishing to say anything to their disparagement, or in disparagement of the gentlemen who may assemble here to pass our laws, I do say this, that we, here, as a Constitutional Convention, can, and should, in view of what we know of other States, and of legislation in this Territory, fix a limit beyond which the Legislature shall not pass. I am not in favor of fixing definitely the amount of expenditures

the cash of the separate departments, but I am in favor of placing restrictions on the officers of the government, in respect to the expenditures of the State Government. I believe this amendment places these restrictions in such a form that they will be appropriate and advantageous to the people, and successful in their results.

Mr. FITCH. On reflection, I will ask leave to withdraw Section 3 of my original proposition, and having made one or two verbal alterations I will offer this in its place. I will read it myself, as the hand-writing is rather obscure.

Section 3. For the first ——— after the adoption of this Constitution, the Legislature shall not levy a tax for State purposes exceeding ——— per cent. on the taxable property in the State, nor shall any appropriation be made exceeding the said revenue, paying debt, interest on the State bonds; second, salaries of State officers; third, State prison expenses; fourth, educational expenses; fifth, legislative, miscellaneous, and contingent expenses.

I desire to say, in offering this amendment, that it seems to me to meet the objections which have been urged by yourself, Mr. Chairman, and the gentleman from Washoe, (Mr. Stevens,) and at the same time it fully covers the ground intended to be covered by my original proposition.

The CHAIRMAN. Permit me to make a suggestion which will probably obviate the necessity of my leaving the chair, that a question might arise whether the bonds of the State of Nevada alone, and not of the Territory, were included in the provision for the payment of interest. Now it is contemplated that we shall assume the bonds of the Territory and its entire indebtedness, and there are not only bonds, but also outstanding warrants, etc.

Mr. FITCH. Then by the consent of the Convention I will change it to "interest on the public debt;" so that it will read——"1st. Interest on the public debt."

The CHAIRMAN. Then it will correspond with the section as it stands in the old Constitution, providing that the State shall assume the indebtedness of the Territory.

Mr. STURTEVANT. I will read, for information, from the statutes of the last session of the Legislature, to show what will be the amount of Territorial indebtedness which we shall have to assume. On page 56 is "An Act to provide for a Territorial Prison," on account of which the balance of the appropriation due is sixty thousand dollars; on page 61 is "An Act to encourage enlistments and give bounties and extra pay to our volunteer soldiers," for which the appropriation is one hundred thousand dollars; on page 90 is "An Act to issue bonds and coupons," the appropriation in that Act being one hundred and fifty thousand dollars. The whole amount of all these appropriations is three hundred and ten thousand dollars.

Mr. COLLINS. At first view, this new section strikes me as covering the entire ground. I have not had time to look at the amendment critically, but certainly it is clear that under it only one per cent. can be levied on the taxable property of the State; that is clear, at least. Then it says:

"Nor shall any appropriation be made exceeding the said revenue."

Does this mean that there shall be no provision made for the payment of any expenses beyond that amount? or that no debt shall be contracted that shall exceed that amount? There has been a section passed already in regard to the revenue, providing that the State may incur a debt not to exceed a certain amount. I would ask if this will allow the Legislature to complete the complement of that debt—if the Legislature would have permission, by virtue of this substitute, to borrow money on the State bonds to an amount equal to that permitted under the section of the Constitution which we have already adopted—or would it inhibit it? If it would prevent the incurring of any indebtedness beyond that, then it occurs to me that this section covers the entire ground; but if not, I would very much prefer the system contemplated in the article as originally presented by my colleague, (Mr. Fitch.) I merely suggest these inquiries that we may know precisely where we stand. I believe that one per cent., allowing that we are to realize a revenue by taxation upon the gross proceeds of the mines to an amount of eighteen or twenty millions, will be adequate to maintain a State Government well. But I do not want anything here that shall be so indefinite that the Legislature, under the pressure of vest, perhaps, can drive through these sentences with a four-horse team. I want it made so tight that it cannot leak, and so clear that no two honest lawyers can materially differ in their construction of it. I say at the first blush it strikes me very favorably as covering the entire ground; but still I would not wish to vote for it until I can understand it more fully.

Mr. LOCKWOOD. I must say that it is strange, passing strange, to my mind, what an entire revolution seems to have taken place in the minds of certain gentlemen regarding the Legislature. They have not only become very fearful of that body themselves, but they tell us that the people, especially in Storey County, are very suspicious indeed of the Legislature. Those gentlemen who have so strenuously contended that the Constitution ought to be left entirely free from legislation, that the wisdom of the Territory was not going to die with this body, and that they had full confidence in the Legislatures which would meet in this State hereafter, now not only propose to restrict every appropriation that shall be made by the Legislature, but they have so great a distrust of that body, and such a suspicion of its dishonesty or inability, that they propose not to pay its members for their services. Now I insist, sir, that the qualifications which entitle a man to a seat in that body, are of the highest order. There are many men in this Territory

who are well qualified to be Controllers of State, but who are not qualified for legislators. That position is one which requires the highest capacity. The man who is to be a competent legislator must know something of law, of literature, of commerce, of agriculture, and of manufactures, in order that he may understand how certain legislative provisions would affect those interests. Now, sir, granting that the Legislature is not entitled to our confidence, as gentlemen have assert, still, if you adopt this provision, what assurance or guarantee have we that they would make any appropriation, for the State Prison, for instance, if it would cut off their own pay? A provision of this character is so novel, so strange, in fact so unheard-of and so untried, that for one I am not prepared to support it. I believe that Storey County is capable of sending just as honorable, honest, and intelligent men to the State Legislature, as it has sent to this Convention; and I hope they will send some of the members of this body to the Legislature, for I have full confidence that they would guard well the interests of the people, and of their own constituents in particular. I am not in favor of this thing called expediency. I believe, sir, that under the solemn oath of office which we have taken as members of this body, it becomes us to judge of all measures, not in the light of expediency, but of right. Under this provision which is proposed to be incorporated into the Constitution, the wheels of government might be blocked entirely. We have a provision already, limiting the indebtedness of the State to the sum of three hundred thousand dollars. If that is not sufficient, and amply sufficient, I believe that we ought to "acknowledge the corn," and say that we are too poor to support a State Government. I take it that every member of the Legislature would like to be paid for his services, as well as every other employé of the State, and I take it, therefore, that the members of the Legislature would reason somewhat in this wise: that the men who furnish the supplies to the State Prison, might just as well go without their pay as they, or the Governor, or the Controller of State, or any other officer of the State. They will not be obliged to make these appropriations, and they will not do so, if thereby they entirely cut off their own compensation. I insist, not that I wish to occupy the time or attention of the Convention, that this matter should be thoroughly sifted and ventilated, for I desire for one, at least, a more perfect understanding of the subject, before I vote for a proposition so entirely novel in its character as the one before the Convention.

Mr. DUNNE. I concur entirely in the sentiments expressed by the last speaker, for I believe that we may safely assume that a man does not lose his natural bent, or change his human nature, because he happens to be elected to the Legislature. And for that reason, believing that the members of the Legislature would still be actuated by the same motives and principles as those which govern men who are not elected to the Legislature, I am inclined to think that this amendment is not politic. I object to it also for this further reason, that it has a tendency to throw the money in the State Treasury into the very worst possible fund imaginable, and that is the Contingent Fund. That is the fund from which we ought to guard the appropriations the most carefully. The tendency would be to keep back all the appropriations to the very last, in order to be sure of having the funds necessary for the payment of the Legislature. I do not believe that under this provision there would be a dollar appropriated for charitable purposes. I do not believe that under it there would be a dollar appropriated for the State Prison, if there were any possibility of avoiding it. I believe that all the appropriations would be kept back for the payment of the Legislature, leaving the balance in the Contingent Fund, to be reached there by special appropriations. Then again, I do not think it is the best policy to adopt to say that the tax levied shall be only one per cent.

Mr. COLLINS. I find that is left blank.

Mr. DUNNE. It was so proposed, certainly.

The CHAIRMAN. I think the gentleman from Storey (Mr. Collins) is mistaken. That which was originally proposed left a blank, but afterwards this was withdrawn and the new section offered takes the place of Section 2 of the amendment first submitted by the gentleman from Storey, (Mr. Fitch.)

Mr. DUNNE. I will say only a few words more. Here are some figures which I have prepared upon the basis of a taxation of one per cent. Under the basis of assessment and taxation which we have adopted we shall probably have an amount of taxable property of thirty millions of dollars, and a tax of one per cent. upon that amount would raise a revenue of only three hundred thousand dollars. And deducting one-fourth, as is usually done in computations of this kind, for the expenses of collection and delinquencies, it leaves the amount only two hundred and twenty-five thousand dollars a year. That is the whole of the revenue to be expended. Or, if you go upon the assumption that the amount of taxable property will be forty millions of dollars, including the proceeds of the mines in the calculation, then the tax will come to four hundred thousand dollars, and there will be three hundred thousand dollars to be expended. And even if you have fifty millions of taxable property, there will only be four hundred thousand dollars of revenue, or very nearly that, to be expended. Now I would be in favor of the amendment originally proposed, so as to get at the contingent expenses and special appropriations. There is the great leak-hole to be stopped. I would prefer to leave those indispensably necessary public institutions to have a fair chance for existence. I would be in favor of restricting the Legislature in that way for a period of four

ment, cutting down the pay of members of the Legislature to a low figure, so that every member will know exactly what is coming to him, and cutting off the appropriations as far as possible, but leaving the public institutions of the State some chance for justice.

Mr. FITCH. One of the most distinguished, if not the most distinguished of historians, Mr. Macaulay, in speaking of the Puritans, says they very often mistook rancor for virtue. So there are a great many people in our own times, and immediately around us, who mistake their prejudices and opinions for principles. Now, sir, I imagine that we are not here for the purpose, each one of us, of forcing upon the Convention his own private, particular, and especial views, and adhering to them with tenacity of purpose, regardless of all the circumstances and surroundings, and of the exigencies which may daily arise. A modern philosopher has said that the difference between a man and a mule is, that a man can change his mind and a mule cannot. We hear a great deal said here about inconsistency, but I believe a man may think one thing one day and another thing the next, and still act consistently. I feel, for one, that if to-day I honestly entertain an opinion and to-morrow events shall have occurred in consequence of which I deem it my duty as a representative, acting in my representative capacity, to adopt a different view, I am not doing any thing inconsistent, immoral, or improper, in taking such a course. I frankly stated in the outset that I was opposed to tying up the hands of the Legislature. As a matter of theory, I believe in the largest liberty for the Legislature, but I do say that there is a necessity for restricting the Legislature, in the way I propose, because the Constitution will be rejected if we do not; and as I regard the adoption of the Constitution as of more importance than my own consistency, I have changed my views, and am now for restricting the Legislature.

Now there is another circumstance in connection with this matter. I am not making any charge upon the members of the Convention; it is a mere circumstance, which I do not pretend to account for, and I do not attribute unworthy motives to anybody. I should be very sorry to do so. But I say it is a remarkable circumstance, nevertheless, that those gentlemen who are opposed to the adoption of a State Government, and those whom we may expect hereafter to oppose it, are all now opposed, apparently, to so perfecting the Constitution as to make it acceptable to the people. It is perfectly marvellous that gentlemen who came here favoring the adoption of a State Government, and who have not been able to get their own views and those of their constituents incorporated into the Constitution, are now, although they do not say they are, here, opposed to the adoption of a State Government, and are opposing unanimously and consistently the perfecting of the Constitution, so that the people may adopt it. I cannot use the term "caucus dictation," because that was ruled out the other day, but I will say that they are opposing it consistently and unanimously.

Mr. DUNNE. I rise to a point of order. The gentleman cannot impugn the motives of other members. I will not make the point of order however, if the gentleman will specify instances.

The CHAIRMAN. The Chair would have taken notice of the infraction of order before, but for the fact that the present occupant of the chair thought the gentleman's remarks were directed to him, and desired an opportunity to reply hereafter. Therefore the Chair has allowed the gentleman to proceed in his line of remark.

Mr. FITCH. I beg leave to state that I have impugned no man's motives, and do not intend to do so.

Mr. STURTEVANT. I think, perhaps, the gentleman refers to me.

Mr. FITCH. Not at all.

Mr. STURTEVANT. Well, I will inform the gentleman, then, that he has hit my course to a dot. [Laughter.] Provided the Constitution is framed in such a shape that I can recommend it to my constituents, I shall do so, and if it does not, I shall not. I am not willing to go home to my constituents and tell my neighbors a lie about anything—at least, not unless I can make money by it. [Laughter.] If the Constitution is got up in that kind of a shape that I can conscientiously recommend it for them to adopt, I shall do so; otherwise, I shall not.

The CHAIRMAN. The gentleman from Storey will proceed.

Mr. FITCH. Mr. Chairman—

Mr. CHAPIN. I rise to a point of order. It is this: that time is being consumed here, day after day, and hour after hour, by gentlemen impugning the motives of others, and constantly departing from the line of argument; and I do insist that it is the duty of the presiding officer to compel every member to adhere strictly to the business before the Convention. We shall not get through for a month to come, unless gentlemen are confined strictly to what is really before the Convention.

The CHAIRMAN. The Chair has already stated the circumstance under which he tolerated remarks which he not only believed to be out of order, but which the gentleman himself must have known were not in order.

Mr. FITCH. I only wish to say that my colleague has spoiled one of the best jokes he ever heard in his life. [Laughter.]

The CHAIRMAN. The gentleman will proceed in order.

Mr. FITCH. It seems, as a Hibernian philosopher once remarked, that the arrow which was aimed at random has hit the mark it was intended to strike. [Laughter.] I was going to say only that those gentlemen having failed to secure the adoption of the views entertained by themselves and their constituents, now seem,

by a most remarkable coincidence, to be all united in opposing what is designed to perfect the instrument, so as to make it acceptable to the people. I have accepted this substitute for Section 2, because I believe it will cover all the ground originally contemplated. It will restrict the action of the Legislature; it will be acceptable to the people, and, if adopted, it will, in my judgment, secure the passage of the Constitution.

[Mr. CROSMAN in the Chair.]

Mr. JOHNSON. I think the gentleman from Storey, (Mr. Fitch,) has assumed much for those whom he says are opposed to the Constitution. I may, or I may not be one of that number. But as for my opposition to this proposition, gentlemen will bear witness that I stated, so far as the first section is concerned, that I was opposed to it, and the gentleman from Storey concurred with my views in that regard, by withdrawing it and substituting another. That, so far as I have heard from any member who advocates the views of the gentleman from Storey, or from any member who was opposed to my views in the matter of taxation, has entirely met with their concurrence and approval; and no member had spoken to the particular matter when the gentleman from Storey, (Mr. Fitch,) just now arose, except those who concurred with him on the subject of taxation. The gentleman from Humboldt, (Mr. Banks,) had spoken, and the gentleman's two colleagues, (Mr. Earl and Mr. Collins,) and I believe none other, except that the gentleman from Washoe, (Mr. Nourse,) may have said a few words.

Mr. FITCH. And the gentleman's colleague, Mr. Lockwood.

Mr. JOHNSON. My colleague is abundantly able to defend himself against the charge of inconsistency. The gentleman from Storey has been apparently desirous all the while to leave these various matters to the Legislature—

Mr. FITCH. I wish to say, if the gentleman will permit me, that I did not fire my gun at the gentleman from Ormsby, at all; nevertheless, the gentleman from Ormsby will remember that the only two members of the Convention who have from the first declined to say on this floor that they were in favor of the adoption of a State Constitution, were the gentleman from Humboldt, (Mr. Dunne,) and the colleague of the gentleman from Ormsby, (Mr. Lockwood.)

Mr. JOHNSON. But I understand that the remarks of the gentleman from Storey were not directed to what had been said in the Convention. His remarks, I apprehend, took a much wider range than that. I suppose the gentleman referred not to what has been spoken here, but elsewhere.

Mr. TOZER. If the gentleman will allow me—as the time for the special order has arrived—I will move that the committee rise, report progress, and ask leave to sit again.

Mr. BROSNAN. I would like to say only this, inasmuch as my friend on my right here has had his laugh upon the Hibernian philosopher, that there was an old philosopher once who said that men were endowed with but one tongue and two ears, in order that they may hear more and talk less. [Laughter.]

The question was taken on Mr. Tozer's motion, that the committee rise, report progress, and ask leave to sit again, and it was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article XI, entitled Salaries, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

TAXATION.

The Convention resumed consideration, as the special order for eleven o'clock, of Article X, entitled Taxation.

The PRESIDENT. The question before the Convention is the motion of the gentleman from Washoe (Mr. Sturtevant) to recommit the article to the Committee of the Whole, with special instructions to amend by inserting before the word "proceeds" the word "gross."

Mr. STURTEVANT. I wish to offer an amendment to take the place of the amendment now before the Convention, because that was proposed merely on the spur of the moment. I move to recommit the article, with instructions to amend the same by striking out the words "proceeds of," and inserting in lieu thereof the words, "bullion produced by," so that it will read, "except mines and mining claims, the bullion produced by which alone shall be taxed."

Mr. WARWICK. I presume that there are very few gentlemen in the Convention who have changed their minds on this subject since the matter was previously tested. I have not desired to shut off any debate, and would not wish to do so now if the Convention really deem that any further discussion is necessary; but merely to ascertain what the opinion of the Convention is, and to save valuable time, I move to lay that motion on the table.

The motion to lay on the table was not seconded.

The question was stated on Mr. Sturtevant's motion to recommit with instructions, as modified by him.

Mr TOZER. I most earnestly and sincerely hope that this motion will not prevail. I have, heretofore, when this subject has been under discussion, expressed my views upon it as fully as I deemed that the necessities of the case required, and I have seen no reason whatever to change the views which I then expressed. Since that time I have spent three or four days among my constituents in Storey County, and have taken occasion to converse with them fully and

to great length on this subject, and I find that the clause, as it was passed to engrossment here after a very lengthy discussion, meets with their approval. It meets with the approval not only of those who represent mining property, but also of those who represent other property there—mining property, real estate, and all other property which is subject to taxation under that provision. Therefore I trust that no amendment will be made, and I will not attempt to present any further argument on the subject.

Mr. BANKS. I am very free to confess, that with all my opposition to taxing the mines indiscriminately, I do not see the very serious objections to this proposed amendment that some gentlemen seem to entertain—that is, as a matter of theory. On the whole, I am rather inclined to think that the wisdom and experience of the Legislature will, in the course of a very short time, if not immediately, lead them to the conclusion to adopt this mode, which has already been adopted by the United States Government. At the same time I do see objections to absolutely prescribing in the Constitution what shall be the mode of action adopted in the taxing of the proceeds of the mines. There is one objection which now occurs to me. It is well known that there are ores which are called "refractory," which can not be profitably worked by processes in use at present within our limits, and it is therefore necessary to send such ores to San Francisco, and sometimes even to Europe for reduction. The value of such ore is very easily ascertained; indeed in practice, it is definitely ascertained, so that the owners are able to obtain advances upon it before it leaves the Pacific coast. There is, therefore, no great difficulty to be encountered in ascertaining the product of the mine, in ore, and the Legislature may hereafter see fit to provide some means of taxing the ore, in cases where the bullion is not produced. I see difficulties coming up which render this proposition more objectionable than the one we originally adopted. That leaves the Legislature full scope to ascertain the best manner, and decide just how the proceeds of the mines shall be taxed; and in my opinion, their experience and observation would be a better rule upon which to act than anything which we should be likely to adopt here, from our knowledge at the present time.

Mr. STURTEVANT. My object in introducing this amendment, is that this matter may be finally and definitely settled. It is well known that this same question has been very warmly contested in every Legislature that has convened in this Territory, and if we leave it open it will be made an issue in every future election, as to whether the mines shall be taxed on their gross proceeds, or on their net proceeds. And in case it is determined to tax only the net proceeds, it will amount to a mere nothing. That is the difficulty we have to encounter. By cunning management those proceeds can be cut down so that even the Gould & Curry will have little or nothing to pay in the way of taxation. The Legislature can put it in such a shape that if the net proceeds only are taxed we shall get no revenue whatever from the mines. Now I am satisfied that the people in the counties which are not altogether mining counties, are not willing to enter into a State Government unless this amendment, or some similar one, is adopted. This question has been argued here for days and days, and if we do not settle it, why should it not be argued in the same way in the Legislature? It has been, as I before remarked, made an issue in every election, and it is bound to be made an issue in every election hereafter, and an issue in every Legislature hereafter convened. It will be debated in both branches of the Legislature, and will create hard feelings, as it already has done. I am strongly in hopes that some amendment of this character will be adopted. It really cannot be deemed advisable for us to enter into a State Government, with a large proportion of the people of the Territory directly adverse to it. Certainly that is not good policy, as all who hear me will admit. We are, or at least we should be, a united people; and unless we are a united people it will not be possible for us to sustain a State Government.

There is another point on which I was going to speak last night. The figures show, and several members here are in possession of them, that there is now a Territorial debt of three hundred and ten thousand dollars, and here I will say that there would not have been any such Territorial debt at this time had it not been for an agreement which was entered into by the representatives of the different counties, that the mines should be taxed in order to liquidate that indebtedness. I refer particularly to the act for the encouragement of volunteering, which appropriates a hundred thousand dollars, and I know that act would not have been passed but for such an agreement. Now, sir, by passing this article without the amendment I have proposed you repudiate that action and violate the agreement then entered into, that such and such things should be done. That agreement was fairly made, at that time, and will those mining counties, through their representatives in this Convention, now turn around and say that it shall not be carried out?

Mr. BROSNAN. I must confess that I was in favor of the proposition which has been presented by my friend from Washoe (Mr. Sturtevant) up to a certain moment this morning, because I thought it would be the most certain way of getting at the results of the proceeds of the mines, to insert that word "bullion." I learn however from inquiry that the same amount of revenue would not be realized, as would be by leaving the provision as it is. And inasmuch as my vote will be governed, on this question, entirely by my judgment, on the light before me, as to which proposition

will produce the most revenue to the government from the taxation of the mines, and believing as I do from what I have learned that much ore of great value—in fact, the first class of ore—has been heretofore, and will continue to be transported to foreign countries for reduction, without having the bullion extracted here, I shall vote, on that ground alone, against this amendment.

Mr. EARL. I think I can offer an amendment which will cover that ground. It is to insert after the word "bullion" the words "and ores leaving the State."

Mr. COLLINS. I rise to a point of order. It occurs to me that last night, at the time when this subject was made the special order for eleven o'clock to-day, the question was upon an amendment to insert the word "gross" before the word "proceeds," and I think that was the amendment stated this morning.

Mr. HAINES. I do not remember that any one referred to the word "gross" in the debate last night except myself. I asked as a special favor that that word should be inserted, and I believe it was at my request that the amendment was offered, as a compromise.

The PRESIDENT. The Secretary will state the condition of the question.

The SECRETARY. The question last night was on the motion of the gentleman from Washoe, (Mr. Sturtevant,) to recommit the article, with instructions to insert the word "gross." This morning the gentleman from Washoe, the Secretary presumed with the consent of the Convention, modified his amendment, and has presented it in another shape.

The PRESIDENT. As no action has been taken by the Convention, giving consent to the withdrawal of the original amendment, the proposition offered by the gentleman from Washoe this morning will be considered as an amendment to his own amendment.

Mr. BANKS. I will inquire whether leave was not given to withdraw the first amendment? I so understood it.

Mr. EARL. I understood it so.

The PRESIDENT. No motion was made to that effect; but the Chair was not prepared to say what the pending question was, when the amendment was presented this morning, not having heard the minutes of yesterday's proceedings read.

Mr. EARL. I understood that unanimous leave was given the gentleman from Washoe to change his amendment, and upon that I have offered this as an amendment to his amendment. Now so far as the proceeds of the mines are concerned, I am perfectly willing that the word "bullion" should be inserted, if it be the desire of the Convention; but I think as has been already said, that we should endeavor in some way to reach that finest and best class of ores which is constantly leaving the State. I think the amendment I have offered will cover that ground.

The PRESIDENT. In any event, the gentleman's amendment will be in order, being only an amendment to an amendment.

Mr. EARL. Now under this amendment we can reach the bullion; no person doubts that. There is the ore constantly leaving the State, and we can and should tax it. Under the amendment, as proposed by the gentleman from Washoe, there would be a question of doubt, but by the insertion of the amendment I have offered, I think the entire ground will be covered.

Mr. NOURSE. I would like to make a suggestion in regard to that. I would like to inquire of the gentleman from Storey, (Mr. Brosnan,) who has taken certain ground in regard to this matter, whether it is by any means apparent that this will secure a greater amount of revenue than the other proposition? Admitting all that the gentleman says in regard to the ores which are leaving the State, still I understand that the amount, or relative value of those very valuable ores is comparatively small—that by far the greater amount of the proceeds of the mines is from what is called third class ore. That is the case with the Gould & Curry mine, I understand. Certainly a vast proportion of the gold and silver now produced, is from ore which is reduced within the Territory.

Mr. BROSNAN. That is because of the great quantity of that class of ore produced.

Mr. NOURSE. Precisely. Now I understand from another gentleman from Storey, (Mr. Hovey,) one who has had experience as Assessor in Virginia City, that the Gould & Curry Mining Company returned to him an amount of something over two millions of dollars, as the amount of their gross proceeds, while the amount of bullion really produced was over four millions.

Mr. HOVEY. From three to four millions.

Mr. NOURSE. Well, nearly four millions, I think their report shows. Now it is claimed by some, and I know that other gentlemen here whose opinions are entitled to the highest respect agree with them, that the decision in regard to what constitutes the proceeds of a mine, was an iniquitous one. It does seem to me, as a matter of law, however, that that decision was correct—and I say it with all due respect for the opinions of gentlemen who differ from me. It seems to me that the ground they took is tenable, and that no other ground is. Clearly, the proceeds of a mines are nothing else than the value of the ore delivered at the mouth of the mine. If after that, by sending the ore to the mills and having it reduced, its value is increased, that increase is the product of the mill and not of the mine; and if you may take the value of the bullion after this additional labor is put upon it, to purify it from everything except the clear metal, if you may add to the value of the ore as it comes from the mine, the labor and material laid out upon it at the mill, why may you not go further, and add the labor which is expended in converting it into watches,

finger-rings, jewelry, and everything of that description? It seems to me that the proceeds of the mines can be, in any point of view, only the value of the ore as it is delivered at the mouth of the mine. The bullion contained in the ore, if it cost one thousand dollars to get it out, is not to be taken, it seems to me, as the proceeds of the mine, because it is really the proceeds of the mine and mill. Now by this amendment, the whole value of the bullion, when extracted, is taken into the account. Does it make any difference, practically, whether the reduction takes place in this State or out of it? If it is sent out of the State, and if it is the property of the miner, as of course it is, is it not taxable just the same as if it were reduced in the State? We have no lien upon it, nor have we upon any personal property, unless we happen to get hold of it on a judgment; but is there any impropriety in the taxation of the bullion, even if the reduction is performed outside of the State? Certainly, that is the way it appears to me.

But I will not take up the time of the Convention. I do not expect that this clause will be amended in accordance with my opinions of what is right, but I still have those opinions, notwithstanding they are sneered at. But if we are going to have a State Constitution, I want it as nearly right as I can get it, and then if it does not suit me, of course I shall not sustain it. It seems to me that the result of this proposition will be to tax all the gold and silver taken from the mines after it gets into the shape of bullion—its whole value in that stage, which even then is not a third part of the value of the mines: while on the other hand, by taxing the gross proceeds only, those ores in their crude state will be taxed without the additional value acquired in the process of reduction. I should suppose from the information derived from the gentleman from Storey, (Mr. Hovey,) that the bullion tax would produce double the amount of revenue that would be obtained from a tax upon the proceeds, or the gross proceeds. I presume no one will deny that I am right in that.

Mr. McCLINTON. I do not think that the proposition of the gentleman from Washoe (Mr. Nourse) is tenable, nor do I believe that it is either law or equity; because if we say that the Gould & Curry Company in giving in their assessable bullion to the Assessor of Storey County at the sum of only two millions of dollars, when it actually amounted to nearly four millions, was only doing what they had a legal right to do, then it occurs to me—if that may be regarded as the proceeds of the mines, ruling out the gross proceeds entirely—that for the same reason the farmer might be exempted from paying taxes on anything but the net proceeds of his farm. Suppose a farmer raises a crop of wheat; by the time he has it ready for the market it has cost him a good deal of money. Say it is worth one thousand dollars, and it has cost him five hundred dollars to raise it and get it ready for market; then I say upon that same principle he would be taxed upon only five hundred dollars on that which is really worth a thousand dollars.

Mr. STURTEVANT. The gentleman from Esmeralda will observe that neither the gross proceeds nor the net proceeds are taxed on ranches, but the ranch itself, and all the improvements, and everything else, are taxed as we proposed in the start to tax the mines. But inasmuch as we could not get that, we propose to tax the proceeds as the next best thing we can get. The farmer's crops are exempted, because his ranch and everything he is worth is taxed, which includes his crops.

Mr. NOURSE. The position which these miners take, and which I think is law, although others say it is not, is, that the product of the mine is ore, and that when you send that ore to the mill, and after it has gone through the mill it is worth twenty five or fifty dollars a ton more, as the case may be, that additional twenty-five or fifty dollars is the product of the mill and not of the mine, just as in the case of the farmer, whom the gentleman from Esmeralda, (Mr. McClinton,) speaks of, who raises a crop of wheat—he is to be taxed on the product. But suppose he chooses to go and get his wheat milled, and barrelled, and put into a shape for market, would he be properly taxed on the flour, after he had paid the expense of milling? Would he not claim it to be a tax on the wheat rather than on the flour?

Mr. McCLINTON. I think no[illegible] think if a farmer raises a crop of wheat, [illegible]as it ready for the mill, and it is then worth five hundred dollars, and if, by converting it into flour, he thereby produces a personal property worth one thousand dollars, it is nothing but justice that he should be taxed for one thousand dollars on that property—that is, that he should be taxed on the flour, and not on the flour in its crude state, or the grain.

Mr. NOURSE. I do not think the gentleman understands me. I say suppose the farm is not to be taxed, except upon the proceeds of it?

Mr. McCLINTON. I think it should be taxed on the state it is in at the time when the assessor levies the tax. If it is flour the farmer should be taxed on the value of the flour, and if it is wheat at the time the tax is levied, he should be taxed on the value of the wheat. And as to the mine, if the bullion is in the ore, let the miner be taxed on the ore for its probable value, and if it has been reduced to bullion before the Assessor levies the tax, then it has become personal property and the Assessor must, according to law, tax the bullion for every dollar it is worth. If he does not do that, it is clear to my mind that he does not fulfil the duties of his office.

I have nothing more to say only this: that I believe honestly when we say the proceeds of the mines shall be taxed, it does mean the gross proceeds. I do not see how we can construe it to mean anything else. Because, when we say all property shall be taxed, the crops,

as a matter of course, as soon as they are grown and harvested, must be taxed regardless of the cost of raising them; whereas, if the net proceeds alone have to come under consideration, the expense of raising the crops would have to be deducted. It is the same way with the taxation of the mines. If you say the proceeds of the mines shall be taxed, I infer that it necessarily means the gross proceeds, and that the whole proceeds will be taxed.

Mr. HAINES. I asked for this amendment as a favor from those gentlemen who had the power to pass the article as it stood, or to concede to us this modification. I did not think then, and our delegation did not think, that the term "gross proceeds" could be regarded as indefinite. But now gentlemen seem to be quite as uncertain what it means as they were in regard to the original proposition. I talked with a great many members last night, and as a general thing they expressed themselves willing to concede this change, but thought that we should insert the word "bullion" instead of "gross proceeds." They mostly expressed themselves satisfied with that, and I thought that at all events the Storey delegation was satisfied with it, from all that was said.

The PRESIDENT. The gentleman cannot take up the time of the Convention by referring to matters which occurred on the outside.

Mr. HAINES. Now I am myself undecided—and will not take up the time of the Convention—I am wholly unprepared to say whether the word "bullion" or the word "proceeds" would be most clear. I believed, however, that the word "proceeds" did not fully cover the ground, and I did desire to place the word "gross" before it, so that the language might be definite, and that there might be no mistaking what was meant.

Mr. WARWICK. Will the gentleman allow me to ask him a question for the purpose of making up my own mind, which is now somewhat undecided? Suppose a farmer, say in Douglas County, should buy a ranch for three or four thousand dollars, and should that very season cut from it nine thousand dollars worth of hay, is it the usual practice for him to pay a tax on the three or four thousand dollars, as the value of the ranch, or on the nine thousand dollars?

Mr. HAINES. He pays on the whole. They tax him proportionably, on the crop and on the land also. Every thing he possesses that has value he has to be taxed upon, and he has to give in under oath the entire value of his ranch—hay and all. Generally the assessment of taxes comes after the hay is cut, too, and even after the grain is sacked. There is nothing we have but what we have to pay taxes on, and we are assessed under oath.

Mr. EARL. I was in favor of this amendment originally, but now I find that it is a question of some doubt—a question upon which there has a considerable diversity of opinion sprung up in the Convention. I thought in the first place that the word "proceeds" would cover the whole ground, and I still think that it would unquestionably do so. I shall therefore fall back upon the original proposition, not on the ground of expediency alone, but because it is clear in my mind. And I find also that the other delegations are not even going to be satisfied with this change. I shall fall back upon the term "proceeds," and there remain.

Mr. HAINES. I asked this modification yesterday as a favor, but I have concluded to let those gentlemen do as they please, leaving it entirely in their hands. I do not ask any more favors.

Mr. EARL. With the leave of the Convention I will withdraw the amendment which I offered.

The PRESIDENT. If there is no objection, the amendment will be considered as withdrawn.

Mr. FRIZELL. In regard to a revenue law which will be uniform and equal, and which will bear equally upon all classes of property, and upon all tax payers, I have found that to enact such a law is extremely difficult. I begin to think, in fact, that to enact a revenue law that will bear equally upon all classes of tax payers is an impossibility, and I profess, Mr. President, to be better acquainted with the revenue laws than with any other branch of the law. Gentlemen are aware that in practice property is often taxed twice. For instance, a man may hold a mortgage, and that is taxed, and the property which is mortgaged is also taxed; and there are other instances of a similar nature which I could mention. Now, sir, the section as it stands at present I believe says that the proceeds only of the mines shall be taxed. This provision is general and broad, and of course the taxing of the mines, or the proceeds thereof, is left entirely to the Legislature. Now, Mr. President, the remarks I have to offer on this subject will be addressed principally to the gentlemen from the agricultural counties, because, not to manifest any hypocrisy or deceit, I am willing to admit frankly that I came here to do justice to my constituency. But at the same time I came here to do justice to my neighbors also.

Some fear has been expressed on the part of the members from the agricultural counties, as regards the election of members of the Legislature, and the views likely to be entertained by the members of the Legislature to come after us. Now I say to gentlemen from the agricultural counties that we have two interests in Storey County, and at all the elections there, up to the present time, the interest which is in favor of taxing the mines has prevailed. A majority of the men in Storey County may not own largely in the mines of Virginia and Gold Hill, but there are many men who own mills that do not own mines, and there are very many others who own cabins on our hills and in our valleys in Storey County, and they wish to see the mines taxed. Consequently up to the present

day—and I am speaking history and facts—the voters of Storey County, at least the majority of them, have been in favor of taxing the mines. I would ask the gentlemen from the agricultural counties to pay attention to these facts, so that their minds may be easy on this question, or at any rate as easy as possible, in order that when this final vote shall be taken they may at least admit that we are willing in our county to concede everything possible. And I think the other mining counties are also willing to concede all that they possibly can concede.

But the point which I was seeking to make, or desired to establish, is this: that in my opinion, in order to benefit the agricultural counties to the greatest possible extent, this clause had better remain as it is. The way the language reads is, that the proceeds of the mines shall be taxed. Now what are the proceeds of the mine? That term is general and broad, and in my opinion it embraces anything and everything that proceeds from a mine and is valuable. And you will find that the Legislature will tax everything of that kind. I ask gentlemen if they do not know that to be the fact? Do they not know that everything which issues from or comes out of a mine, everything which emanates from it, your Legislature will tax under that clause as it stands? It may be bullion, or it may be ore; it may be ore which is sent out of the State; it may be first class ore, or second, third, fourth, or fifth class ore; but whatever it is, under that class it must be taxed. Are not gentlemen satisfied of that? I have the best of reasons in the world for knowing that such will be the case, and one of my reasons is, that the very life of the Legislature, or, at least, their bread and butter, will depend upon it. They will have to tax the proceeds of the mines in order to pay the judges' salaries, and the compensation of other officers—and those judges might be called upon to decide this question, although I think they will not be. I think it is perfectly plain, and that no question can arise upon it. It is for the interest, therefore, of the Legislature to tax everything which proceeds or emanates from the mine that is valuable. Not only the bullion will be taxed, but on the same day when the assessor goes round and finds the bullion, he may also find two hundred and fifty, or three hundred, or a thousand tons of ore, which has proceeded from the mine, which is property that has emanated from the mine, and he will certainly assess that.

Mr. HAINES. Will the gentleman allow me to ask him a question? How is the assessor to get at the value of that ore which is lying on the surface there, and of which no man knows the value?

Mr. FRIZELL. I will answer the gentleman's question. There may be some little difficulty, the same as there would be if you were called upon to decide what your hay was worth. You cannot tell what that would be worth within possibly ten dollars a ton, but there is not much difficulty to be apprehended in that respect.

Mr. NOURSE. Suppose instead of bullion this gold and silver were worked up into jewelry, which would be saleable at four or five times the value of the bullion, would the gentleman say that that was the value of the proceeds of the mine? And if he would not, why not, as well as to say that the bullion is the proceeds of the mine?

Mr. FRIZELL. I will answer the gentleman from Washoe in this way: That this bullion would have been beneficiated or extracted directly out of the ore; then if after that it is refined still more and made more valuable, then some person has added a value to it—the jeweler or silversmith perhaps—and consequently some person must be assessed for this added value. It may not be the mines, but it will be the person at least in whose hands it is found. I assure the gentleman from Washoe that these assessors are going to get all the property. You of the agricultural counties admit that they get all yours, now; you say they nip everything you have, and I tell you they are equally as hard on us in the mining counties. I gave orders to my deputies only a few weeks ago to assess Mr. Wright, the Peter Funk jeweller in Virginia. He has an establishment there, and they will nip that, because they can get at it. He will be assessed upon forty thousand dollars, for the reason that he has advertised that his property is worth that amount. [Laughter.] Now, gentlemen, I am speaking between two fires, for you all know that my colleague (Mr. Toner) is very extreme in his views.

The PRESIDENT. The Chair will suggest to the gentleman that it is now nearly twelve o'clock, and unless the Convention desires to leave this business unfinished, some action should be taken upon it very soon.

Mr. EARL. I move that the time for recess be extended until half-past twelve o'clock, or until this business is disposed of.

The question was taken on Mr. Earl's motion, and on a division the motion was agreed to—ayes, 12; noes, 9.

Mr. BANKS. I understand that, in accordance with this motion, as soon as we get through with this subject the Chair will decide that the Convention stands adjourned for the recess.

The PRESIDENT. Yes sir.

Mr. BANKS. Very well; I presume the time is long enough; this is probably the only speech.

Mr. COLLINS. No, sir; there will be another.

Mr. FRIZELL. Some of my remarks may not be exactly in order, but I hope I may be indulged, nevertheless, as this is an intricate and delicate subject.

The PRESIDENT. The Chair hopes the gentleman will confine himself to the question as closely as possible.

Mr. FRIZELL. What I intended to say was this, that if the representatives of the agricultural counties really think that by the insertion of the amendment offered by the gentleman from Washoe, (Mr. Sturtevant,) and then adding

to it the amendment which was withdrawn by my colleague, (Mr. Earl,) they will be able to add one cent to the amount to be derived from taxing the mines, beyond the amount which would be produced from that source under the clause as it now stands, then I will go with them for it.

Mr. STURTEVANT. I will tell the gentleman one thing, and that is, that with that amendment we will go for the Constitution, and if it is not adopted we will not.

Mr. FRIZELL. I was advancing these arguments merely for the purpose of showing to the representatives from the agricultural counties that so far as their interests are concerned, the clause is better as it stands, and while doing that I wish to talk to my colleague a little as to the interests of Storey County. He must know that the Legislature which is to come after us will tax indiscriminately every thing that comes from the mines, and he must know, also, that if we provide for taxing nothing but the bullion, then nothing but the bullion can or will be taxed, because that is a definite and single term. The reason why I address my remarks to him is, that he may not rise up here and charge that I am throwing off on the interests of our constituents. I say we have a double, nay, a triple constituency to represent here. In the first place we have to do justice to all men, and in the second place we have a double constituency in Storey County, at least one half of whom desire that the mines shall be taxed, although perhaps the other half hope that they may be taxed as lightly as possible.

Having been connected with the collection of the revenue for several years, in one capacity and another, I say to gentlemen honestly that my wish and desire is, so far as obtaining a revenue from the mines is concerned, that we should suffer that section to remain just as it is. I do not think we can possibly amend it in any way by which and through which we shall reach the same amount of revenue from the mines, as we shall if we allow it to remain. Nevertheless, as I said before, if the representatives of the agricultural counties think they can do better by putting in "gross proceeds" or "bullion," I will vote with them.

Mr. STURTEVANT. The gentleman will understand that I did not speak for any one but myself, when I said we would go for the Constitution with this amendment, and not without it. What I mean to say is, that I will do whatever I can to assist in securing the adoption of the Constitution, if this amendment is inserted.

Mr. COLLINS. I do not design to detain the Convention but a few moments, but I do ask gentlemen on both sides, if there are two sides, to see to it, that what we do, we do properly and well. Now if the word "proceeds" has not a clear and distinct legal meaning, let us make it so. If we do not desire that any Legislature, with voracious grasp, shall lay hold on all the proceeds of the mines—the gross proceeds—in such manner as shall be in accordance with its own best judgment, let us not leave the language so indefinite as to warrant such a proceeding; but let us make it so plain, that if an appeal should be taken, and the question adjudicated by the proper courts, the language shall be so clear and distinct, if possible, that we may know beforehand what will be the decision of the courts.

Now there is too much indefiniteness in this word "proceeds," as it is here employed, for certainly when you take from the mines the ores which exist in them, it occurs to me that those ores really constitute the proceeds of the mines, and that the milling part of the operation, which converts them into bullion, is something subsequent to the proceeds, and additional thereto. I am inclined to think, therefore, that if the question should be carried up to the higher courts, even allowing that the Legislature would not look upon it in that light, the courts might be induced to do so, and to decide that the gross proceeds of the mines are the ores, as they are taken from the mines, or the bullion, minus the expense of teaming, reducing, and beneficiating the ores. If that is the case, and that is the desire of the Convention, let us make it plain. If our object is to tax the gross proceeds of the mines, as they shall come from the mills in the form of bullion, let us make that plain; and if it be the mind of the Convention that it shall be the net proceeds, in the form of bullion, that shall be taxed, let us make that plain. I ask gentlemen of the Convention not to leave this thing purposely and intentionally in such a condition that it is going to offer a premium for political corruption—a premium for every description of fraud at all our general elections—an inducement for one interest to conspire in its operations to bring about a certain measure, and for another interest to conspire to upset or defeat that measure. Such a state of things would have an inevitable tendency to promote lobbying in the Legislature for all future time.

I do think that this kind of indefiniteness is something which should be scouted and trampled upon by this Convention—that we should meet the question like men, facing the issue fairly and squarely. Let each and every member know what is the opinion, and the honest opinion, of every other member. For one, I have never allowed myself to train in the company of those who, while they mean one thing, say another. I want to be understood always, and I want, so far as my voice and vote go in this Convention, that there should be distinctness in their utterances. I do not want in this coming canvass to have any one man say that this clause means one thing, while another man says that it means another thing. I do not want to have to say for myself that I really do not know what it means, but that my opinion is, it means so and so, and then to have another man following me, and showing by clear argument that it means the very opposite.

I do not want to present the thing with two faces—one face for Storey County, and another face for the agricultural counties. Let us declare clearly what we do mean, and not practically offer a premium for political corruption, at every general election, and in every session of the Legislature.

Mr. NOURSE. I wish to state, in order to avoid any doubt as to my own position, my colleague, (Mr. Sturtevant,) having stated that he would vote for the Constitution with this amendment in it, that I am not prepared to go so far as to say that. I do not say that I will support a Constitution so unjust in principle as I think this would be—I do not say it is—if it should make different rules for different interests, providing for the taxation of one interest and not for that of another. I am not prepared to say that I could vote for such a Constitution; I will leave that to be decided hereafter, upon deliberate and careful thought. I wish to say now, and I give it for what it is worth, that my ground for supporting this amendment, is simply this: that I think it better than the section as it stands at present, which, as all the members of the Convention know, is in my opinion very much worse than the amendment I myself offered. I desired to say this, only that the Convention might understand my position, and that no one might suppose I had pledged myself to vote for the Constitution, if this amendment were adopted. I do not say that I will not, but I say frankly that it does not look to me as if I could support a Constitution with such a clause in it. It seems to me—and my only wish is to be understood in this matter—that this clause providing for taxing the bullion is much nearer right than the section as it now stands, and therefore I shall vote for the amendment.

The PRESIDENT. The question is upon the motion of the gentlemen from Washoe, (Mr. Sturtevant,) to amend the motion to recommit, so as to instruct the committee to amend Section 1, by striking out the words "proceeds of," and inserting the words "bullion produced by," so that the clause will read—"Except mines and mining claims, the bullion produced by which alone shall be taxed."

The question on amending the motion to recommit was taken by yeas and nays, and the vote was—yeas, 8; nays, 21—as follows:

Yeas—Messrs. Belden, Brady, Collins, Folsom, Haines, Nourse, Sturtevant, and Mr. President—8.

Nays—Messrs. Banks, Brosnan, Chapin, Crawford, Crosman, Dunne, Earl, Frizell, Gibson, Hawley, Hovey, Hudson, Kennedy, Mason, McClinton, Murdock, Proctor, Tagliabue, Toner, Warwick, and Wetherill—21.

During the voting—

Mr. FRIZELL. I desire to occupy one minute in explaining my vote. If I knew which way the majority of the members from the agricultural counties would vote, I would vote with them. I have said that I thought the section would secure the greatest amount of revenue as it now stands.

Mr. NOURSE. I hope the gentleman will vote as he thinks is right.

Mr. FRIZELL. I have also said I would vote for the "gross proceeds," if they desire it, or I would vote for levying the tax upon the bullion. I will vote "no."

Mr. LOCKWOOD. I ask to be excused from voting, and I will give as my reason for it, that I am not satisfied as to what will be the result of this measure. I took the pains to go last night to a representative of our county in the Legislature and talk with him about it, but he seemed to be unable to give me any information in regard to the probable working of this measure. From the short time I have had to investigate the subject, I really do not know how to vote.

Mr. BANKS. I move that the gentleman be excused from voting.

The question was taken, and the motion was agreed to.

The result of the vote, as previously stated, having been announced—

The PRESIDENT. The question now is on the original motion to recommit, with special instructions, offered by the gentleman from Washoe, (Mr. Sturtevant.)

Mr. NOURSE. I do not want to make the Constitution odious at all, but I will call attention to only one matter—for a question is sure to be raised upon it. It says here:

"The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real, personal, and possessory, excepting mines and mining claims, the proceeds of which alone shall be taxed."

Now in accordance with a well known principle of law, does not this exception, naming mines and mining claims, take them entirely out of the operation of the principle or rule of a uniform and equal rate of taxation? I only desire to suggest that to the Convention.

The question was taken by yeas and nays on the motion to recommit, with the original instructions, offered by Mr. Sturtevant, to insert the word "gross" before the word "proceeds," and the vote was—yeas, 14; nays, 16—as follows:

Yeas—Messrs. Belden, Brady, Brosnan, Collins, Crawford, Frizell, Folsom, Gibson, Haines, Hawley, Lockwood, Nourse, Sturtevant, and Mr. President—14.

Nays—Messrs. Banks, Chapin, Crosman, Dunne, Earl, Hovey, Hudson, Kennedy, Mason, McClinton, Murdock, Proctor, Tagliabue, Toner, Warwick, and Wetherill—16.

So the motion was not agreed to.

During the voting—

Mr. HAWLEY. I ask to be excused from voting on this question, because I am not fully satisfied in my own mind that the operation of this provision will secure that uniformity of taxation which is desired.

The PRESIDENT. The gentleman may be excused, if there is no objection.

Several members objected.

Mr. HAWLEY. As the matter of one vote

will make no material difference, I will vote "aye."

The result of the vote having been announced, as previously stated—

The PRESIDENT stated the question to be upon the final passage of the article, and it was again read, as follows:

ARTICLE X.

TAXATION.

SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real, personal, and possessory, excepting mines and mining claims, the proceeds of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.

The question was taken by yeas and nays, and the vote was—yeas, 20; nays, 10—as follows:

Yeas—Messrs. Banks, Belden, Brosnan, Chapin, Collins, Crosman, Dunne, Earl, Frisbil, Hovey, Hudson, Kennedy, Mason, McClinton, Murdock, Proctor, Tagliabue, Tozer, Warwick, and Wetherill—20.

Nays—Messrs. Brady, Crawford, Folsom, Gibson, Haines, Hawley, Lockwood, Nourse, Sturtevant, and Mr. President—10.

So the article was passed.

At ten minutes past twelve o'clock, on motion of Mr. McCLINTON, the Convention took a recess until two o'clock, P. M.

AFTERNOON SESSION.

The Convention met at two o'clock, P. M.

On motion of Mr. HAWLEY, in the temporary absence of the President, Mr. CROSMAN was requested to act as President *pro tem.*, and took the Chair.

COMMITTEE ON SCHEDULE.

Mr. PROCTOR. Before going into any other business, I wish to ask the Convention to allow my name to be taken from the Committee on the Schedule, and that of my colleague (Mr. Tagliabue) to be placed on that committee in my stead, for the reason that I wish to be absent this evening on account of business, and may not be able to attend with the committee when its business is transacted.

The PRESIDENT, *pro tem.* If there is no objection, the change suggested will be made.

On motion of Mr. TAGLIABUE, indefinite leave of absence was granted to Mr. Proctor, to take effect to-morrow morning.

SALARIES.

Mr. DUNNE. I move that the Convention resolve itself into Committee of the Whole, for the further consideration of Article XI, entitled Salaries, the President *pro tem.* remaining in the Chair.

The question was taken and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (the President *pro tem.* remaining in the Chair,) and resumed the consideration of Article XI, entitled Salaries.

The CHAIRMAN stated that the pending question was the adoption of Section 1 of the substitute offered by the gentleman from Storey, (Mr. Fitch,) which section, as heretofore modified, reads as follows:

SECTION 1. For the first —— years after the adoption of this Constitution, the Legislature shall not levy a tax for State purposes exceeding —— per cent. on the taxable property in the State, nor shall any appropriation be made exceeding the said revenue; paying—first, interest on the public debt; second, salaries of State officers; third, State Prison expenses; fourth, educational expenses; fifth, legislative, miscellaneous, and contingent expenses.

Mr. BANKS. I move that the committee rise, report the section back to the Convention, and recommend its adoption.

The CHAIRMAN. There are, I believe, some other sections to be moved.

Mr. BANKS. Very well; I withdraw that motion, and will move the adoption of the section which has been read. I understood that the others had been read. I will say, in reply to a remark of a gentleman near me, that I conceive the best course is to leave the amount blank, and after we get into Convention, we can refer the whole article to a committee, for the purpose of obtaining a report as to the respective amounts proper to be inserted in the blanks. By that means we shall secure a basis of figures on which to act.

Mr. BROSNAN. I have not a very clear idea of the section as it now stands, as to the condition of the miscellaneous and contingent expenses, and I am very much afraid that it is too indefinite in that respect. In order to test the sense of the Convention, I move to strike out the words "miscellaneous and contingent expenses." I suppose that those expenses, whatever they may be, are comprehended in the term "legislative expenses," and therefore I prefer to use only the latter term.

Mr. BANKS. I would inquire of the gentleman from Storey, who has made this suggestion, whether the pay of officers of the Legislature, and expenses of that character, may not be properly classed as miscellaneous expenses. It seems to me that we ought to have some margin of this kind.

Mr. TOZER. I think so, too.

Mr. BROSNAN. I made the suggestion only to get information from gentlemen who are better posted.

Mr. HOVEY. I certainly am unable to see what object we can have in view in restricting the Legislature in one article previous to this, in which they are prohibited from incurring a debt of over three hundred thousand dollars, if we are also going to restrict them here. If gentlemen want to fix the salaries of the State officers, I am willing to do so, but I am not

willing to go into all these items and restrict the amount of the appropriations to be made by the Legislature.

Mr. PROCTOR. I have intended from the commencement, whenever I could have an opportunity, to move to strike out the entire article; and if it is in order, I will make that motion now.

The CHAIRMAN. The committee have stricken out the entire article, as it was in the old Constitution, and are now trying to perfect the substitute.

Mr. PROCTOR. But I propose now to strike out the substitute entirely.

The CHAIRMAN. The committee are trying to perfect the substitute, and it will not be in order to move to strike it out until it is perfected. Then it will be for the committee either to adopt or reject it.

Mr. PROCTOR. I do not understand that the substitute has been stricken out. There has been a substitute introduced, and I understand there is an amendment offered.

The CHAIRMAN. There was a substitute offered by the gentleman from Storey (Mr. Fitch.) The gentleman from Humboldt (Mr. Banks) called for a division of the question upon that, and the question was first taken upon striking out the original article, and that prevailed. Now the committee are trying to perfect the substitute, before taking the question upon inserting it. That is the condition of the question, as the Chair understands it.

Mr. McCLINTON. As I understand it, we have stricken out the entire article, and it is not competent now for the committee to strike out the substitute proposed until after it is perfected as nearly as possible. Then a motion to strike out I understand will be in order.

The CHAIRMAN. The Chair so understands. The question is on the amendment offered by the gentleman from Storey, (Mr. Brosnan.)

Mr. BROSNAN. If my friend from Humboldt (Mr. Banks) will withdraw his motion, I will move that the whole article be referred to a select committee.

The CHAIRMAN. That motion would not be in order in Committee of the Whole.

Mr. BANKS. The gentleman from Storey only desires, I suppose, to indicate the course to be pursued; that is, that the committee rise, and recommend the reference of the whole article to a select committee. Several gentlemen have suggested, however, that we have not yet sufficiently considered the subject to refer it. We have not sufficiently considered it, even to be prepared to present, in proper shape, our own views upon it. I would like to have it referred at a proper time to some committee, not only to fill the blanks, but also to consider the proposition involved in the last part of this section, relative to contingent expenses.

Mr. BROSNAN. I will modify my motion according to the gentleman's suggestion, with a view of so shaping our course that the article may be referred to a select committee.

Mr. BANKS. I suggest that a motion to recommend a reference takes precedence of a motion to amend. I understand that the gentleman from Storey moves that the committee rise, and report the article back to the Convention, with a recommendation that it be referred to a special committee.

Mr. PROCTOR. I would like to see that motion amended so as to refer the article to the Committee on Schedule. My reason is, that I suppose all we propose to do, so far as the regular salaries are concerned, is to provide for the salaries and fees of office, until such time as the Legislature can have an opportunity to fix them as to them may seem proper. I understand that to be entirely within the province of the Committee on the Schedule, and it seems to me that it would be proper, for that reason, to refer the whole subject to that committee. I do not suppose that this Convention proposes to fix permanently the salaries and fees of office. We have provided that the debt of the State shall not exceed three hundred thousand dollars, and I do not think we need to put any further restriction upon the Legislature, so far as appropriations are concerned. I think, at all events, that this provision need only be made to apply to such expenses as may be incurred previous to the meeting of the first Legislature.

Mr. WARWICK. If I were a resident of the county of Ormsby, and had an excellent business in an office within ear-shot of the capital, so that I could be at my post in a Convention, or in the Legislature, and at any moment step out and attend to my business, losing nothing by my patriotism in giving my services to the Convention or the Legislature, I think I might possibly be in favor of this amendment; but, inasmuch as it seems to me virtually nothing more nor less, when you come to figure the thing down, than a property qualification for members of the Legislature, I object for one to anything of the kind. It is virtually saying to a large class of the people of this State—"Gentlemen, you shall not represent any portion of the people of the State of Nevada in the Legislature unless you are able to pay your own expenses." Now, sir, it may be, as the gentleman from Humboldt remarks, a very good qualification for a member of the Legislature, but he will excuse me if I find myself unable to look through his spectacles. I say, if you are going to institute a property test, say so at once. Either say that a member of the Legislature shall be worth so much, as they do in South Carolina, or else place the members of the Legislature on the same footing as you do all other officers. Why should you prefer one class of officers to another? Is not your legislator just as necessary as your Controller, your Governor, or any other official? But by this proposition you virtually say to the members of the Legislature—"Gentlemen, you shall exhaust the Treasury of the State in paying every body else, and after all the money is gone you may

take the rest." [Laughter.] Now that is the gist of the proposition, disguise it as you will. It is virtually saying that no man unless he has property shall come into the Legislature of the new State. There are plenty of gentlemen, I am free to admit, who are willing to sport their patriotism, and are willing to pay for the privilege of coming here. Some of us have paid pretty heavily, and have felt it a grievous burden, although we still desire to serve the State and our constituencies. But other gentlemen may not be able to bear the burden. It seems to me that this amendment would have come with better grace from the other end of the State rather than from those living within pistol-shot of the capital—from men whose business is scarcely interrupted at all by attending to their legislative duties.

If you introduce this clause into the Constitution, what is the result? A poor man in the county of Lander may be as good a citizen, as patriotic, and as able a man as though he were worth a hundred thousand dollars, and able to come here and support himself in style, and still you say to him virtually that if he is elected he must pay out his money in coming here and going home again, and pay all his expenses while he is here, and after all the resources of the State are exhausted he shall take depreciated scrip in payment, which will not even come into the market for a year or two. The consequence is, that you adopt a provision that no man, unless he is a man of property, shall be the representative of any portion of the people of the State in the Legislature. I insist, therefore, the members of the Legislature being as necessary to the State as any other class of officers which go to make up the government of the State, that they should be paid, and not left in a state of starvation, as they would be by this provision. For that reason, I oppose this proposition, although it does appear to commend itself to the judgment of some gentlemen in the Convention, for whose judgment I entertain the highest respect. In my opinion, it is neither more nor less than a property qualification, and as such it would be a disgrace to our Constitution.

Mr. NOURSE. I am unable to see this matter in the light which the gentleman from Ormsby (Mr. Johnson) does, with whom I have so often voted that I shall be pained to part from his company now, nor yet in the same light as the gentleman from Lander, (Mr. Warwick,) who has last spoken. I think I see a broad distinction between the duties and responsibilities of members of the Legislature, and those of any other officers of the State Government, in this matter. The point is made here—Why do we not treat them all alike? Why give the judges, for instance, a preference over the members of the Legislature? Are not the members of the Legislature needed as much as the judges or the Governor or the State Controllor? True, but the judges, and all the other officers, have no power over this matter of the finances. It is the Legislature alone that has the power to provide for paying out money. Now the general complaint in respect to all Legislatures is wasteful legislation. And notwithstanding the doctrine which has been so often preached here, that there will be legislators as wise as we are—and I do not doubt it—still, I say, the responsibility is divided among so many that it is very easy to get a State into debt, and its finances embarrassed.

Now in regard to this proposition, I did not offer it. It was written by a gentleman here who is not a member of the Convention, and handed to me, and it met my approval, in principle, although I do not know about the details; and it was brought to the attention of the Convention by another gentleman. Still the proposition seems to me to be a good one. It gives the members of the Legislature a motive for economy which they never had before. As long as they do not themselves feel the pinch of the narrow means which the State is certainly going to suffer under, they will not be as economical as if that necessity pressed directly upon them. Now what we propose by this arrangement is, not that other things than the compensation of the Legislature shall take up the entire revenue of the State, but that sufficient revenue shall be provided to carry on the government comfortably, and if one per cent. is not enough let us make it higher, so as to have enough to carry on the government comfortably and economically, but only reasonably so. Then by this proposition we say to the Legislature, in substance, "Now you have enough means to carry on the government, and it is for you to manage as you choose; but you must remember that you have only so much money, and out of that money the other bills must be paid before yours."

Mr. DUNNE. I rise to a point of order. I do not see that we accomplish anything by discussing the merits of this question, when the question before the committee is on a motion to rise, and I believe that on that motion it is not in order to discuss the merits.

Mr. NOURSE. I only discussed the merits of the question, because gentlemen who spoke before me did so, and I really did not know what the immediate question was.

The CHAIRMAN. The Chair was disposed to take that view in relation to the gentleman's remarks.

Mr. NOURSE. I had about got through, and do not not desire more than three minutes longer. ["Leave, leave!"] Well, we say to the members of the Legislature, as we might say to a salaried clerk, or anybody else in our employment, "You have so much money to do business with, and it is enough, and now to make sure that you will be economical, it is provided that the other bills shall be paid first, and your bills last. If you manage it as you ought to, there will be plenty of money to pay you, and pay you promptly; but if you do not, if you are wasteful and extravagant in

your expenditures, if you are thrifties and careful in respect to the money of the State, and it is all gone before it comes to your turn, then it is your own fault.' If we did not give the Legislature enough to properly carry on the government with, the argument of the gentleman from Lander would be correct; but if we do allow them enough, then all we do by this proposition is to give them a personal and pecuniary motive to be economical and prudent. That is the way it looks to me.

Mr. WARWICK. Now, how does it work on the simple question of mileage? You allow the members, in State scrip, thirty cents per mile, as mileage, but they have to pay in coming here from Reese River, over thirty-two cents per mile, in gold. For that they have to take, when they can get it, State scrip, at thirty cents on the dollar, perhaps, and they will have to pay that out at the rate of seventy-five cents per mile in returning. Now how are they to get their pay, if the Legislature is ever so economical?

Mr. NOURSE. I will say, in answer to that—

The CHAIRMAN. Gentlemen will remember that the question is on the motion to rise and recommend the reference of the substitute to a special committee.

Mr. DUNNE. I hope the motion will be modified so as to refer it to the Committee on the Schedule, and for this reason: that nearly all the remaining business is before that committee, and they desire to sit to-night to finish up. If it is referred to that committee, they will have it all in their hands, and can go through with it at once.

Mr. BROSNAN. I will accept the suggestion, and move that the committee rise and recommend the reference of the subject to the Committee on the Schedule.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration Article XI, entitled Salaries, had made some progress therein, and recommend that the Convention refer the article to the Committee on Schedule.

The report was accepted, and on motion of Mr. DUNNE, the article was referred to the Committee on Schedule.

COMMITTEE OF THE WHOLE.

Mr. BANKS. I understand that the next article, the one entitled Education, has been referred to the Committee on Education, which has not yet reported. I will therefore move that the Convention go into Committee of the Whole, (the President remaining in the chair,) on Article XIII, entitled Militia, Article XIV, entitled Public Institutions, Article XV, entitled Boundary, and Article XVII, entitled Amendments. I apprehend that neither of these articles will require much time for their consideration.

The question was taken, and the motion was agreed to.

The Convention accordingly resolved itself into Committee of the Whole, (the President pro tem. remaining in the Chair,) for the consideration of the several articles referred to such committee.

MILITIA.

Article XIII, entitled Militia, was taken up and read as follows:

ARTICLE XIII.

MILITIA.

SECTION 1. The Legislature shall provide by law for the organizing and disciplining the militia of this State, for the effectual encouragement of volunteer corps, and the safe keeping of the public arms.

SEC. 2. The Governor shall have power to call out the militia to execute the laws of the State, or to suppress insurrection or repel invasion.

Mr. CHAPIN. I move the adoption of the article.

The question was taken, and the motion was agreed to.

PUBLIC INSTITUTIONS.

Article XIV, entitled Public Institutions, was taken up and read as follows:

ARTICLE XIV.

PUBLIC INSTITUTIONS.

SECTION 1. Institutions for the benefit of the insane, blind, and deaf and dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be prescribed by law.

SEC. 2. A State Prison shall be established and maintained in such manner as may be prescribed by law, and provision may be made by law for the establishment and maintenance of a House of Refuge for juvenile offenders.

SEC. 3. The respective counties of the State shall provide, as may be prescribed by law, for those inhabitants who, by reason of age and infirmity, or other misfortunes, may have claim upon the sympathy and aid of society.

Mr. GIBSON. I move that the article be adopted as a whole.

The question was taken, and the motion was agreed to.

BOUNDARY.

Article XV, entitled Boundary, was taken up. The SECRETARY read as follows:

ARTICLE XV.

BOUNDARY.

SECTION 1. The boundary of the State of Nevada shall be as follows:

Beginning at the point of intersection of the thirty-second degree of west latitude, with the thirty-eighth degree of longitude west from Washington; thence running south on the said thirty-eighth degree of west longitude until it intersects the northern boundary line of New Mexico; thence due west along the northern boundary line of New Mexico until such line intersects the easterly boundary of the State of California; thence northerly along the eastern boundary line of the State of California until such line intersects the forty-second degree of north latitude; thence east with said forty-second degree of north latitude to the place of beginning.

And whenever Congress shall authorize the admission to the Territory or State of Nevada of any portion of the territory on the easterly border of the Ter-

going defined limits, not exceeding in extent one degree of longitude, the same shall thereupon be annexed within and become a part of this State. *And furthermore provided*, that all such territory lying west of said ascertaining the boundary line herein prescribed, which the State of California may relinquish to the Territory or State of Nevada, shall thereupon be embraced within and constitute a part of this State."

Mr. CHAPIN. In regard to the boundary of the State, I think that is prescribed for us in our Enabling Act. It will be found in Section 2 of that Act.

Mr. BROSNAN. I suppose the description there given does not vary from that in the Organic Act, and the description in the section as read, is taken from the Organic Act, with the exception, or rather with the addition of the last paragraph in the section, commencing with the words "and whenever Congress shall authorize the addition," etc., and continuing to the end of that section. That portion was added by the committee in the former Convention, with the expectation that we could obtain from Congress an extension of one degree on our eastern boundary, and also with the expectation that we could compromise in some way with the State of California, so as to make the summit of the Sierras the western boundary line of our State.

Mr. CHAPIN. It strikes me that we have nothing to do but to adopt the boundary which is given us by Congress, and I now move, therefore, to amend this section by adopting the boundary as prescribed in the Enabling Act. Will the Secretary read the description there given?

The SECRETARY read from the Enabling Act as follows:

SEC. 2. *And be it further enacted*, That the said State of Nevada shall consist of all the territory included within the following boundaries, to wit: Commencing at a point formed by the intersection of the thirty-eighth degree of longitude west from Washington, with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the eastern boundary line of the State of California; thence in a northwesterly direction along the said eastern boundary line of the State of California to the forty-third degree of longitude west from Washington; thence north along said forty-third degree of west longitude, and said eastern boundary line of the State of California, to the forty-second degree of north latitude; thence due east along the said forty-second degree of north latitude to a point formed by its intersection with the aforesaid thirty-eighth degree of longitude west from Washington; thence due south down said thirty-eighth degree of west longitude to the place of beginning.

Mr. WARWICK. I think there is another discrepancy here, sir, for the reason that this gives us the thirty-seventh degree—I refer now to the article just read—as our eastern boundary, while the Enabling Act, it appears, gives us the thirty-eighth degree. Again, the Enabling Act gives us the forty-third degree on the west, while this article, as it is now before us, restricts us to the forty-second degree. Consequently, I think that in order to have this provision in consonance with the Enabling Act, by the authority of which we are framing the Constitution, we had better adopt Section 2 of the Enabling Act just as it stands, in place of this article which has been read. I therefore move to amend the section describing the boundary line, by adopting, in place of the language there found, the language employed in the Enabling Act, so far as that describes the boundaries of the State.

Mr. DUNNE. I think the discrepancy to which the gentleman refers, consists mainly of a transposition in the description. In the Organic Act, the description begins with the northern boundary line, running south, whereas in the Enabling Act, they begin at the southern boundary line. There may be some other differences, but I think it will be found that this transposition makes all of the difference there really is.

Mr. BROSNAN. I do not wish the vote to be taken on this proposition, until we are able to understand it thoroughly. I believe this article was correctly drawn originally, but as my friend from Humboldt (Mr. Duane) says, there is a difference in the reading, because a different point of commencement has been taken by those who framed the Enabling Act.

Mr. WARWICK. Has not a degree been added more than we looked for?

Mr. BROSNAN. No, sir. I will state to the gentleman, that at the time this article was drawn in the former Convention, it was understood that there was to be an amendment to the original Organic Act of the Territory. I believe it is now understood that the Organic Act of the Territory was subsequently amended, and an additional degree attached or included within our boundaries by an amendatory Act of Congress, passed in the succeeding session. Hence, having taken that in, if I am correct as to the fact, I suppose that in framing the Enabling Act they have incorporated it into this description, giving us that additional degree. The President of the Convention, who is not now present, is more thoroughly acquainted with this matter than I am, but I understand that to be the fact in the case. It is true, I am informed, that the Organic Act has been so amended as to increase our area to the extent of one degree.

Mr. WARWICK. I suggest that we had better allow this matter to lie over for a few minutes, until it can be thoroughly examined and understood. We can meanwhile go on with other business. I will withdraw my motion to amend, and move instead that a committee of three be appointed by the Chair to compare the two Acts of Congress, and report upon the framing of this description of our boundary; and I hope that the gentleman from Storey (Mr. Brosnan) will be one of that committee.

The CHAIRMAN. The motion will not be in order, as we are now in Committee of the Whole.

Mr. NOURSE. It strikes me that it is hardly necessary to refer this matter. I think, myself, from the casual glance I have been able to give it, that the language in the old Constitution

describes the same territory as that in the Enabling Act. But whether it does or not, I suggest that it would be better to have our boundary defined exactly in the words of the Enabling Act. Admitting that the territory described may be the same in both, still is it not better to adopt the very words of the Act under the authority of which this Convention has assembled? That will save the possibility of all question on the subject.

Mr. CHAPIN. I hope there will be no reference of the matter, and I agree perfectly with the gentleman from Washoe, (Mr. Nourse,) that it would be better to adopt the language of Section 2 of the Enabling Act, so far as that goes, and then we can preserve the latter part of the section in relation to the future extension of our boundary on the east and on the west, by the action of Congress, or of the State of California.

Mr. WARWICK. I will renew the motion to amend by adopting the language of the Enabling Act describing the boundaries, in place of that which stands in the section, leaving the latter portion of the section as it now reads.

The question was taken, and the amendment was agreed to.

The question was taken on the adoption of the article as amended, and it was adopted.

AMENDMENTS.

Article XVII, entitled Amendments, was next taken up.

The SECRETARY read Section 1 as follows:

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if in the Legislature next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become a part of the Constitution.

Mr. NOURSE. I had intended to propose an amendment to that section, but I have not yet drawn it up. I will state, however, with the permission of the Convention, what the amendment is. I propose to provide that the Constitution may be amended by a two-thirds vote of all the members elected to each branch of the Legislature, at a regular session; the amendment so passed by the Legislature being submitted to the people at the ensuing general election, so as to shorten the time required for amending the Constitution one year. It seems to me that in the infancy of our State, it will be entirely expedient for us to adopt that course. We may at the same time provide that, after an amendment has once been made in that manner, the rule shall thereafter be that which is laid down in this section, requiring the adoption of any amendment by two succeeding Legislatures. I have been the more strongly impressed with the propriety of this idea, for the reason that it was agreed on all hands here the other day, that in the course of two or three years, notwithstanding our present condition is such that we are unable to make any appropriation for railroad purposes, we may very probably be in a condition to make such appropriations, and by adopting a provision of this kind the people would be enabled to amend their Constitution in that particular in the course of only two years; whereas, under the section as it now stands, if we have biennial sessions, it will take about four years. I am not prepared to make a motion to amend the section, because I have not yet drawn up any amendment.

Mr. COLLINS. I suggest that the article be referred to a committee.

Mr. WARWICK. Cannot the Convention pass on to other business, and allow the gentleman from Washoe to have a few moments to draw up the amendment he desires to offer? As he explains the amendment it certainly strikes me favorably.

The CHAIRMAN. The Secretary will, if there is no objection, proceed to read Section 2, and when the reading is concluded, the gentleman can, if he pleases, offer his amendment to Section 1, as a general amendment.

The SECRETARY read Section 2, as follows:

SECTION 2. If at any time two-thirds of the Senate and Assembly shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors at the next election for members of the Legislature, to vote for or against a Convention, and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention to be holden within six months after the passage of such law, and such Convention shall consist of a number of members not less than that of both branches of the Legislature.

Mr. NOURSE. I will make one single suggestion in regard to this section. It seems that we are not going to have any change in our Constitution unless two-thirds of both the Senate and the Assembly get an idea that it is necessary not only to revise but to change the instrument. Now it seems to me that it would be better to say here, that they may call a Convention, if they shall think it necessary, to cause a revision of the Constitution. I will move to amend the section by striking out the words "revise and change," and inserting instead the words, "cause a revision of."

Mr. BANKS. The only argument that I have to address on this subject, is one which I fear will not have much weight, and that is, that this is the language of the California Constitution, and I prefer it because I am prejudiced in favor of that Constitution.

Mr. NOURSE. But the gentleman surely does not think it is the best language?

Mr. BANKS. I will not argue the point.

Mr. FRIZELL. This first section contemplates reasonable but limited changes; and then the second section, as I understand, looks to an entire change in the frame-work of the Constitution. I think the remarks of the gentleman from Washoe (Mr. Nourse) are correct, inasmuch as there appears to be a radical difference in the meaning and object of the two sections.

Mr. NOURSE. I do not think the gentleman quite understands me, and I will endeavor to explain my meaning more fully. The first section refers only to changes in one or two single articles in the Constitution, which may be submitted as simple propositions to the people; but if the Legislature shall by and by think that we have outgrown the instrument, as it were, and do not want merely to make a slight change, but to revise the instrument generally, by adopting such amendments throughout the whole body of it, as may be thought best, then it is provided in this second section what shall be the way to do it. Now it is only the wording of this provision that I want to amend. As we have it now, if the Senate and Assembly shall think it necessary to "revise and change" the entire Constitution, that is, to change the whole of it, then they are to call a Convention, etc. Now I do not think we mean that they shall change the whole instrument in case a Convention is called, but rather that they shall revise the whole of it, and change only such portions as they may think fit.

Mr. FRIZELL. I suggest that the difficulty could be remedied by striking out the word "entire."

Mr. NOURSE. I think it will be better to adopt the amendment I have offered—to strike out the words "revise and change," and substitute the words, "cause a revision of."

The question was taken upon the amendment offered by Mr. Nourse, and it was agreed to.

Mr. BANKS. I have two amendments to propose to Section 2, which I will offer separately, however, as they are not necessarily connected. The first amendment I offer is, to strike out all before the word "necessary," and insert in lieu thereof the following words:

"If at any time the Legislature by a vote of two-thirds of the members elected to each House shall determine that it is"—

The words to be stricken out are these:

"If at any time two-thirds of the Senate and Assembly shall think it"—necessary, etc.

That may mean two-thirds of all the members elected, or it may mean two-thirds of those present and voting. I prefer to have it clear and well-defined, so as to require two-thirds of the members elected, inasmuch as we have established that rule in all previous cases.

The question was taken, and the amendment was agreed to.

Mr. BANKS. Now I propose the following, as an addition to Section 2:

"In determining what is a majority of the electors voting at such election, reference shall be had to the highest number of votes cast for the candidates for any office, or on any question, at such election."

Gentlemen who have lived in California for any length of time, know that attempts have been unsuccessfully made there, under precisely the same language as that contained in this original section, to secure a revision of the Constitution of that State; and it will be remembered that it was held by one party that a majority of all the votes cast at the election, was required to carry the proposition for calling a Convention, while by others it was held that a majority of the votes cast on the particular question submitted, should be deemed sufficient. Again, another question subservient to this, arose, namely: What office should it be, the vote upon which should determine the question of a majority?—whether it should be the vote on members of the Legislature, Governor, or something else, that should be taken as the criterion of the number of the votes cast at that election? Suppose the question came up, as naturally it did, at the first, as to what number of persons voted, and it was found that, for members of the Legislature there were, for instance, one hundred thousand votes cast, and for some other officers a less number of votes; then what should be taken as the number of people voting? I propose to have that matter defined in our Constitution, by providing that not only shall there be a majority of the whole number of votes cast on the proposition, but also, that in determining that majority, we shall take the whole number of votes cast on the question, or for the candidate having the highest number of votes.

Mr. LOCKWOOD. I do not quite understand yet, but I presume the explanation is clear enough. Suppose there are two candidates for Governor, does the gentleman propose to count the votes for both the candidates?

Mr. BANKS. Yes, sir; all the candidates.

Mr. LOCKWOOD. Then I am for it.

Mr. BANKS. For instance, if we take the votes cast for Governor there may be two or three candidates, and I mean by this amendment that we shall take the aggregate vote for that office as the criterion to determine the whole number of votes, and also to settle the question in regard to whether the votes cast on the constitutional question is sufficient to be a majority.

The question was taken upon the amendment offered by Mr. Banks, and it was agreed to.

Mr. GIBSON. I move that Section 2, as amended, be adopted.

The question was taken, and the section was adopted.

Mr. BROSNAN. I move to amend Section 1 of this Article by striking out the words "a majority," and inserting, in lieu thereof, the words "a two-thirds vote." Also by striking

out all after the words "ayes and noes taken thereon," down to, and including the words, "elected to each house," and inserting instead simply the word "and." Then the section, if amended as I propose, will read as follows:

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if the same shall be agreed to by a two-thirds vote of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become a part of the Constitution.

Mr. DUNNE. I will move an amendment. I believe it is not desired that this shall be a permanent feature of the Constitution, but only that it shall apply for a certain number of years, and then the provision, as the section stands now, is designed to take effect. I think the object can be better reached by leaving the section as it stands and adding a proviso that if at any time within three, four, or six years, as may be determined upon, it shall be deemed advisable to amend the Constitution, then it may be done in this manner.

Mr. BROSNAN. If the gentleman from Humboldt will draw an amendment in that form I will accept it.

Mr. DUNNE. The gentleman from Storey has the idea of it, and can better draw it himself.

Mr. NOURSE. While that is being done I wish to submit a few ideas upon the principle of the proposed change. It has always seemed to me that the great object of a fundamental law is permanency—that it is simply for the sake of permanency that the Legislature itself may not be permitted at its pleasure to change the fundamental law. Now the operation of this section, as it now stands, is to provide that no sudden whirlwind of passion, or feeling, or of fancied interest, shall bring about the hasty adoption of an amendment perhaps radical in its character, and changing important features in our Constitution. I could cite the Convention to an instance of a State which had a provision in its constitution forbidding the incurring of any debt above two hundred and fifty thousand dollars, but the lapse of this space of a year for an amendment was not required, so as to give the people time to think between the action of one Legislature and that of another. On the contrary, the Legislature was permitted by a two-thirds vote to propose an amendment, and submit it to the people directly, and if then it were ratified by the people it was thereupon adopted, as a part of the fundamental law of the State. There came up in that State the case of railroad corporations desiring the loan of the State credit, and the matter came up, too, at a time of unparalleled distress in the State. It was represented that if this thing could be done the prevailing pecuniary distress would be relieved at once. The proposition was set forth in the most glowing light. Those railroad corporations were not sparing in the expenditure of their means, in the Legislature and elsewhere. They sent orators, and bands of music around, and all that sort of thing. The result was that within the space of some two or three months the constitutional amendments asked for were passed by the Legislature, authorizing the State to contract an indebtedness of five millions of dollars. The proposition having passed the Legislature, was forthwith submitted to the people, and adopted by them, with a perfect whirlwind of excitement, by a vote of not less than five to one. And yet within one year thereafter, if the question had been again submitted, there would have been a vote of five to one the other way. Now would it not have been better for that State if this one year had been allowed to elapse, giving the people an opportunity for the sober second thought? Would it not have been better to suffer the year to elapse before taking a vote upon the proposition to amend the Constitution? It seems to me that the arguments are very strong in favor of requiring such a lapse of time, so that when one Legislature shall have passed an amendment, then the people shall have a year to think of it, and if at the end of that year, the following Legislature again passes the amendment, the probability is that the people will ratify it. Then, and not till then, it will become part of the Constitution, adopted upon due reflection, and not subject to the charge of being passed by means of excitement and passion.

Now it seems to me that this is a guard which the people should have in their State Constitution, against even their own rash haste, excitement, and inconsiderate action. For we should recognize the fact, that a community may be carried away by excitement, the same as a legislative body, or an individual may be, and may do things under such influences, which in their cool and sober moments they will have occasion to regret. It has therefore been found a good plan to guard not only against the hasty action of the people's servants, but also against that of the people themselves, when the time comes for their action in this matter of constitutional amendments and changes. For these reasons I should be very sorry, for one, to see that year for cool reflection stricken out.

Mr. BANKS. Is it not contemplated that provision shall be made by which the Legislature shall meet yearly for the first two or three years? Gentlemen all around me say that is the understanding. Now if that is the case, then certainly for two or three years, at least, the time required for the final adoption of any amendment would be very short, under the section as it now stands. The action of two successive Legislatures is required, but the Legislature meeting every year, only one year would

intervene between the original proposition and the final adoption of whatever amendments it may be deemed necessary to make in the Constitution. In that way, it seems to me the Legislature will be able to accomplish all that will become necessary within a few years, and I do not see, in that view of the matter, that any amendment of the section is necessary.

Mr. LOCKWOOD. I would like to say a few words while the gentleman from Storey (Mr. Brosnan) is preparing his amendment, and whenever he is ready to present it I will stop. I heartily concur in the sentiments which have been expressed by the gentleman from Washoe, (Mr. Nourse.) Sir, I consider that the fundamental law of this future State would be placed almost in the light of a legislative enactment, by the change contemplated. I would consent to have it provided, that the time for submitting these amendments, after action on them by one Legislature, shall not be extended beyond two years; but further than that I do not think I can conscientiously go. In my opinion, the provision as it now stands is ample for amending the Constitution. It may be that I have less confidence in the people than others, but I do believe that if there shall be a desire to change the Constitution for any purpose, no great damage can ensue from allowing the amount of time prescribed in this section to intervene between the first passage of the proposition for amendment and its final adoption. I certainly think that it is well to provide that changes shall not be made for any slight or trivial objects or purpose—that it shall only be under extraordinary circumstances that we are to be called upon to change the fundamental law of the State.

Another thing which I intended to say, was this: that if we make this amendment, public speakers might go out, in the interest of the opposition to the Constitution, and say that notwithstanding we have made certain restrictions in the Constitution, those restrictions are only adopted for the purpose of electioneering, and that just as soon as we get the Constitution fastened on the people, we propose to amend it to suit ourselves, and to suit the politicians.

Mr. BROSNAN. The amendment I propose is now ready. It leaves the section as printed to stand, and my motion is to amend it by inserting the proviso, which I have drawn up, after the words "as the Legislature shall prescribe." I will ask the Secretary to read the section as it will stand with the proviso inserted.

The SECRETARY read as follows:

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the Legislature shall prescribe; *provided*, that if at any time within four years after the adoption of this Constitution it shall be advisable to amend the same, such amendment or amendments may be proposed in the Senate or Assembly, and if the same shall be agreed to by a vote of two-thirds of all the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon. It shall then be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the Legislature shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become a part of the Constitution.

Mr. FRIZELL. Before the vote is taken on that amendment, I desire to say that I recollect the other night, when this question came up before the Judiciary Committee, it was then and there conceded, for some reasons which we supposed to be good, but which at the present time, however, I do not recollect distinctly, that it would be right and reasonable to provide that one Legislature, by a two-thirds vote, might recommend any change in the Constitution, and then that another Legislature might vote upon and adopt such change, if it deemed proper, taking the proposition as a whole. Although those reasons do not occur to my mind at the present time, still, I will say I believe that a State Constitution ought not to be changed on any slight pretext, or without great care and deliberation. On the other hand, a Constitution is like any other piece of ponderous machinery, that may or may not be perfect in all its parts, and when that machinery is made and put together by thirty-nine mechanics, which, I believe, is the number composing this Convention, it may possibly be that the entire machine will not at first work smoothly in every respect. Therefore, for the first two or three years, it may not be out of the way to allow one Legislature, by a two-thirds vote, their action being subsequently sanctioned by the people, to change the Constitution in some particulars. I think there are clearly two sides to this question.

Mr. CHAPIN. If the reasons which were presented in the Judiciary Committee were not important enough to fix themselves upon my colleague's mind, so that he could retain them two days, I am inclined to think they are not entitled to much weight. It occurs to me that we had better let this section remain as it is. That is my idea of it. I do not want to see this fundamental law easily or suddenly changed.

Mr. BANES. I dislike exceedingly to object to any proposition submitted by the gentleman from Storey, who has offered this amendment, for I know that he has given the subject much attention, and he is generally on the conservative side. Nevertheless I shall be compelled to vote against this proviso. The only argument which appears to me to possess much force, in

favor of the incorporation of the proviso, is that circumstances may arise at an early day which will imperatively demand a change in the Constitution, and that by the provision in Section 1, as it stands, it will require two sessions of the Legislature, and then a vote of the people, to effect such change. Now, in the first place, I think we ought to discriminate as far as possible against a change, for the reasons stated by the gentleman from Washoe, (Mr. Nourse,) and the gentleman from Ormsby, (Mr. Lockwood.) But I have this further objection, that if it shall become apparently indispensably necessary to procure a change in the Constitution, in a space of time shorter than that required for submitting it to two successive sessions of the Legislature, resort may be had to the power conferred in Section 2, of calling a Convention. That could not involve a very great amount of expense, and if the requirements or exigencies of the time be such as absolutely to demand a change, the people would not grumble at the expense. Certainly I think that these two sections, as they now stand, present all reasonable facilities for amending the Constitution. Section 2 provides, as we have amended it, for action by one Legislature to call a meeting of the representatives of the people in Convention, and then another election is to be held within six months thereafter. Within six months, then, after the first action on the proposed change, the Convention may be held, and the change required in the Constitution may at once be made. I think we have here all the power required for amending the Constitution, and at the same time we have all the safeguards which other States have found it desirable to throw around their fundamental laws. It will be remembered that, in the history of all new States, the dangers to the government have arisen in the early periods of their history. And the reasons for this are obvious. The people are to a great extent unacquainted with the individuals whom they are compelled by the necessities of the case to vote for and elect to office. So it was in California, and so it has been in all the western States. Men come into the new community who have some talent, and are able, therefore, to secure the confidence of the masses, but in many cases they may not be worthy of confidence. Probably our history will be the same, until we have lived here and met each other in private life and in public stations, long enough to become so familiarly acquainted with each other that we can judge with tolerable accuracy as to the honesty and fitness of aspirants for office. There will be less danger, therefore, in that respect, after the lapse of two or three years. I hope, for these reasons, that if this conservative provision is to be thrown around our Constitution as a safeguard in any stage, it will be in the first few years of our history as a State.

Mr. McCLINTON. I am not entirely satisfied with the section as it will read, with the last proposed amendment, and I am now preparing another amendment. I suppose it will not be in order at the present time, but if gentlemen will have the courtesy to wait a few minutes, I will endeavor to have it finished, and submit it to the consideration of the Convention. I am satisfied that it will meet the views of almost every member. The proposition I intend to submit, while it still requires the action of two Legislatures to amend the Constitution, will yet, to a great extent, prevent one faction, or one portion of the people, from carrying through an amendment which would be objectionable to a very large minority opposed to them; and it will also tend to prevent a large majority of the Legislature from making amendments suited to their own particular and peculiar views, against the wishes of the minority. At the same time it will not require quite so long a period of time to make an amendment of the Constitution as under the section as proposed to be amended. With the section as it stands at the present time, although a necessity might arise for a change in the fundamental law, yet before that change could be effected, the necessity might wear itself out, and we should not be able to secure the benefit of the required amendment.

Gentlemen here inform me that my amendment would be in order at this time, and if the Convention will bear with me a half a minute, I will prepare it, and read it for information, or offer it for the action of the Convention. I think it will be satisfactory to the mover of the pending amendment.

Mr. BROSNAN. I will merely say, whilst the gentleman from Esmeralda is preparing his amendment, that for myself I have no particular feeling about this matter. I am rather conservative in my views, touching written Constitutions, and as much apprehensive of change as any man; but our condition here seems to be so peculiar that I think our people would be competent to judge with discretion whether or not in the course of three or four years they would like to have, for instance, an opportunity to advance their aid, as a State, towards the completion of works of internal improvement. That was mainly my object in introducing the amendment—to give the people an opportunity of exercising that privilege and right, if they desire it, being confident all the time that they will be able to judge and determine the question with proper care and caution.

Mr. McCLINTON. I will now present my amendment.

The SECRETARY read the amendment, as follows:

Strike out in the fourth line the words "a majority" and insert in lieu thereof the words "two-thirds vote." Also, strike out all after the word "thereon," in the eighth line to and including the word "house" in the fourteenth line, and insert in lieu thereof the word "and." Also, strike out all the remaining portion of the section after the word "thereon," in the twenty-first line, and add in lieu thereof the following: "Said proposed amendments shall then be referred back to the

Legislature next convening, and if said amendments shall be adopted by a vote of two-thirds of all the members elected to each branch of the Legislature, said amendments shall become a part of the Constitution.

Mr. McCLINTON. My object in offering this amendment has been partially explained already, and it will be obvious I think to every member of the Convention. In the first place, by this amendment a two-thirds vote of all the members elected to both branches of the Legislature is required to propose amendments to the Constitution. Now there, at the very commencement, the rights of the people are, some would think, sufficiently guarded. Again it proposes that at the next general election the amendments so proposed shall be submitted to a vote of the people, and if a majority of the people shall ratify the amendments, they do not then become a part of the Constitution, but are referred to the next succeeding Legislature, and that next Legislature when convened has a voice in the matter also, and there it requires a two-thirds vote, again, of all the members elected to both branches, to ratify any amendment, and make it become a part of the Constitution. That will save about two years time. That is to say, amendments can be made in two years less time, as I understand it, than they can by the provision proposed by the gentleman from Storey, (Mr. Brosnan.)

Now our interests here are constantly changing. We do not know one year what exigencies may arise the next year, to be affected by that action which we may now consider proper and just. Such exigencies may arise as to render it a matter of absolute necessity to adopt an amendment to the Constitution, in order to meet certain ends for the promotion of the public good; but under the proposition of the gentleman from Storey (Mr Brosnan) that necessity would wear itself out before the changes could possibly be made. One of the many objections which I heard advanced against the old Constitution was in regard to this very Article of Amendments—that any proposed amendment must be delayed so long. Now I am opposed *in toto* to giving any one Legislature the power to amend the Constitution, even with a vote of ratification by the people. I do not think that a Constitution, which is framed for all time, should be so easily patched up. It might be fixed up one year to suit the interests of one party, and the next year there might be another party in power, which would fix it up to suit them, and the year following perhaps another mongrel hybrid party might get into power, who would also remodel it to answer their purposes, and so on *ad libitum*. I want to avoid that danger, and at the same time to shorten the time required for amendments, and give the people power to pass upon them.

Mr. EARL. I desire to define my position, and it is that I believe that this provision is strong enough and good enough just as it is, and I hope we shall let it remain without any amendment.

Mr. DUNNE. My object in suggesting that this amendment should be put in the form of a proviso, was merely that it should not interfere with the first section as it stands; because I deemed it necessary, if it were not put in that form, to reenact that section. I think the majority of the Convention regard Section 1 in the light of a basis, as to future constitutional amendments, and therefore if there was to be any amendment of a temporary nature, I thought it should be placed at the end, in the way of an exception. In regard to the argument of the gentleman who offered the last amendment, that by his proposition we could get an amendment of the Constitution two years sooner than under this proviso of the gentleman from Storey, (Mr. Brosnan,) I cannot see how it is to be done.

Mr. McCLINTON. I understand that under the proviso of the gentleman from Storey, it will take four years to amend the Constitution.

Mr. DUNNE. The amendment proposed by the gentleman from Esmeralda, (Mr. McClinton,) provides, if I understand it correctly, that a two-thirds vote of the members of the Legislature may adopt any proposed amendment, that it shall then be submitted to the people and adopted by them, and that then it shall go to the succeeding Legislature and be adopted by them, after which it shall become a part of the Constitution. Now as the gentleman from Storey (Mr. Brosnan) proposes by his proviso, an amendment could be adopted by the same means exactly, with the exception of the last vote of the Legislature, and therefore an amendment to the Constitution could be effected six months sooner under that proviso than under the amendment of the gentleman from Esmeralda.

Mr. McCLINTON. That would be too soon.

Mr. DUNNE. I believe it is best to let the section stand as it is.

Mr. MASON. I am sorry to differ with my colleague from Esmeralda, but I cannot see his point. After an amendment to the Constitution has been presented for the consideration of the people of the State, and after it has received their ratification, and been returned by them to the succeeding Legislature, I think it would be assuming a good deal for that Legislature to refuse to indorse the action of the people. After the people have once expressed their views by a majority vote, they would naturally expect the Legislature to act in accordance with those views. Now I desire to see all the safeguards possible thrown around the people's rights, but I know what questions are principally aimed at by constitutional amendments. I have lived in other new States, and I have seen the evils resulting from this sort of action, and therefore, for one, I am in favor of the section as it now stands.

Mr. BROSNAN. Inasmuch as it seems to be the sense of the Convention that the section is well enough just as it is, and inasmuch as that is not in opposition to my own impressions, I

will, with the leave of the Convention, withdraw my amendment.

No objection being, made the amendment was withdrawn.

The question was stated on the amendment offered by Mr. McClinton.

Mr. McCLINTON. I will suggest to my colleague, (Mr. Mason,) with all due respect, that if he had a very distinct recollection of the strong points which were made against the adoption of the old Constitution last fall, in Esmeralda County, he would hardly be in favor of retaining this section as it now reads; because I know, of my own personal knowledge, that this matter of amendments was a very strong point, made by able men, too, against the adoption of the old Constitution; and I know, moreover, that one of the delegates from Esmeralda who sat in the Convention of last year, when he came back and I called his attention to this provision, was astonished and dumbfounded, and said he was not aware that any such section had been incorporated in the Constitution. He had either misunderstood it, or did not know of it, or had paid no attention to it. And one thing which he told me before I came to this Convention was, that if it were possible we should modify this section. Well, I am not his catspaw, nor any particular man's catspaw, but I do want to comply, as nearly as I can, with what I believe to be the wishes of my constituents, so long as their wishes do not conflict with the common welfare of the Territory.

Mr. MASON. I was not aware of any such argument having been used against the old Constitution; certainly none such were advanced in my presence. I am satisfied that that Constitution was repugnant to a majority of the people in our county, from a variety of causes. One objection was, that it contained too much legislation, and another was the poverty of the Territory, and its consequent inability to sustain a State Government. In respect to this last objection, however, as I have heretofore remarked, there is probably not one man in ten who does not pay more for his vices than he does for his taxes, or than he would pay for taxes under a State organization. I am satisfied that my colleague is acting from conscientious motives, and at the same time I trust it will be conceded that I act from the same kind of motives. I stand here responsible to my constituents alone. I belong to nobody, sir, and nobody belongs to me. (Laughter.) I approve of this article just as it is; I think it is worded exactly as it should be, and it is a safeguard which, in my opinion, should be placed around our Constitution, at least for the first four years.

The question was taken on Mr. McClinton's amendment, and it was not agreed to.

Mr. DUNNE. I will move a little amendment in the first section. I move to amend by inserting the word "all" before the words "the members elected," so as to read—"all the members elected." We have adopted that word "all" elsewhere, in the same connection.

The question was taken, and the amendment was agreed to.

Mr. GIBSON. I move the adoption of Section 1 as it is now amended.

The question was taken, and the section was adopted.

Mr. DUNNE. I move that the committee rise and report back the several articles upon which we have acted, with the amendments that have been recommended thereto.

The question was taken, and the motion was agreed to, and the Convention accordingly rose.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration Article XIII, entitled Militia, Article XIV, entitled Public Institutions, Article XV, entitled Boundary, and Article XVII, entitled Amendments, and had instructed him to report the same back to the Convention, with certain amendments in Articles XV and XVII, in which they asked the concurrence of the Convention.

Mr. BANKS. The regular parliamentary order is now, I believe, to order these articles engrossed.

The PRESIDENT. The question is first on the adoption of the report of the Committee of the Whole.

The question was taken, and the report was adopted.

The PRESIDENT. The articles will now be referred to the Committee on Engrossment.

ELECTION ORDINANCE.

Mr. COLLINS. By reference to the Enabling Act, it will be seen that provision is made that the soldiers, both within and without the Territory, in the United States service, shall vote on the adoption or rejection of the Constitution. And in another part of the Enabling Act it is further required that this Convention shall provide by ordinance for taking the votes of the people on the adoption or rejection of the Constitution, and also the votes of those who may be in the service of the United States, on the same question. In accordance with these requirements I have drafted an ordinance which I will now submit. Originally, my design in drafting it was to have it embrace only the vote upon the adoption or rejection of the Constitution, including the votes of those in the army of the United States, within and beyond the boundaries of this Territory; but I found it was going to require a great deal more of space than I had anticipated, and therefore I concluded to embody in the same ordinance the rules of voting to govern in the election of officers to be elected under this Constitution, and the election of Presidential electors on the 7th of November next, in case the Constitution shall be adopted. I will now present

the ordinance for the consideration of the Convention.

The SECRETARY read the ordinance, as follows:

WHEREAS, The Enabling Act passed by the Thirty-Eighth Congress, and approved March 21st, A. D. 1864, requires that the Convention charged with the duty of framing a Constitution for a State Government "shall provide by ordinance for submitting said Constitution to the people of the Territory of Nevada for their ratification or rejection," on a certain day prescribed therein; therefore, this Convention, organized in pursuance of said Enabling Act, do establish the following.

ORDINANCE.

SECTION 1. On the first Wednesday of September, A. D. 1864, this Constitution shall be submitted to the qualified electors of said Territory in the several counties thereof, for their approval or rejection; and further, on the first Tuesday after the first Monday of November, A. D. 1864, there shall be a general election in the several counties of said Territory, for the election of State officers, Supreme, District, and County Judges, members of the Legislature, members of Congress, and three Presidential electors.

SEC. 2. All persons qualified by the laws of said Territory to vote for Representatives to the General Assembly on the said twenty-first day of March, including those in the army of the United States, both within and beyond the boundaries of said Territory, and also all persons who may by the aforesaid laws be qualified to vote on the first Wednesday of September, A. D. 1864, including those in the aforesaid army of the United States, within and without the boundaries of said Territory, may vote for the adoption or rejection of said Constitution on the day last above named. In voting upon this Constitution, each elector shall deposit in the ballot-box a ticket, whereon shall be clearly written or printed "Constitution, Yes," or "Constitution, No," or such other words that shall clearly indicate the intention of the elector.

SECTION 3. All persons qualified by the laws of said Territory to vote on the first Tuesday after the first Monday of November, A. D. eighteen hundred and sixty-four, including those in the army of the United States within and beyond the boundaries of said Territory, may vote on the day last above named for State officers, Supreme, District, and County Judges, Members of the Legislature, Member of Congress, and three Presidential electors to the Electoral College.

SEC. 4. The elections provided in this ordinance shall be holden at such places as shall be designated by the Boards of Commissioners of the several counties in said Territory. The Judges and Inspectors of said elections shall be appointed by said Commissioners, and the said elections shall be conducted in conformity with the existing laws of said Territory in relation to holding the general election.

SEC. 5. The Judges and Inspectors of said elections shall carefully count each ballot immediately after said elections, and forthwith make duplicate returns thereof to the Clerks of the said County Commissioners of their respective counties, and said Clerks shall immediately transmit an abstract of the same, inclosed in an envelope, by the most safe and expeditious conveyance, to the Governor of said Territory, marked "Election Returns."

SEC. 6. Upon the receipt of said returns, and the returns of the soldiers' vote, as hereinafter provided, or within twenty days after the elections, if said returns be not sooner received, it shall be the duty of the Board of Commissioners, to consist of the Governor, United States District Attorney, and Chief Justice of said Territory, to canvass the returns of said elections, both Civil and Military, in the presence of all who may wish to be present, and immediately publish an abstract of the same in some newspaper of said Territory, and shall forward them by mail or otherwise, copies of said newspapers to the clerks of each county of said Territory, for the use of the county and township officers thereof. The said Board shall, after the said November election and canvassing of its votes, issue certificates of election to such persons as were elected on the said first Tuesday after the first Monday in November, A. D. 1864. The Governor of said Territory, immediately after ascertaining that this Constitution has been ratified by the people, shall make proclamation of the fact in some newspaper as aforesaid, and thenceforth this Constitution shall be ordained and established as the Constitution of the State of Nevada.

SEC. 7. For the purpose of taking the vote of the electors of said Territory who may be in the army of the United States, the Adjutant-General of said Territory shall, on or before the fifth day of August next following, make out a list in alphabetical order, and deliver the same to the Governor, of the names of all the electors, residents of said Territory, who shall be in the army of the United States, stating the number of the regiment, battalion, squadron of cavalry, or battery of artillery, and the letter of the company to which such elector belongs, and also the county and township of his residence in said Territory.

SEC. 8. The Governor shall classify and arrange the aforesaid returned list, and shall make therefrom separate lists of the electors belonging to each regiment, battalion, squadron, and battery from said Territory in the service of the United States, and shall, on or before the fifteenth day of August following, transmit, by mail or otherwise, to the commanding officer of each regiment, battalion, squadron, and battery a list of electors belonging thereto, which said list shall specify the name, residence and rank of each elector and company to which he belongs, if to any, and also the county and township to which he belongs and in which he is entitled to vote.

SEC. 9. Between the hours of nine o'clock A. M., and three o'clock P. M., on each of the election days hereinbefore named, a ballot box or suitable receptacle for votes shall be opened under the immediate charge and direction of three of the highest officers in command, for the reception of votes from the electors whose names are upon said list, at each place where a regiment, battalion, squadron, or battery of soldiers from said Territory in the army of the United States may be on that day; at which time and place said electors shall be entitled to vote for all officers for which by reason of their residence in the several counties in said Territory they are authorized to vote, as fully as they would be entitled to vote in the several counties and townships in which they reside, and the votes so given by such electors, at such time and place, shall be considered, taken, and held to have been given by them in the respective counties and townships in which they are resident.

SEC. 10. Each ballot deposited for the adoption or rejection of this Constitution in the army of the United States, shall have distinctly written or printed thereon, "Constitution, Yes," or "Constitution, No;" and further, for the election of State officers, Supreme, District, and County Judges, members of the Legislature, member of Congress, and three Presidential Electors, the name and office of the person voted for shall be plainly written or printed on one piece of paper. The name of each elector voting as aforesaid shall be checked upon the said list at the time of voting by one of the said officers having charge of the ballot-box. The said officers having charge of the election shall count the votes and compare them with the checked list immediately after the closing of the ballot-box.

SEC. 11. All the ballots cast, together with the said voting list checked as aforesaid, shall be immediately sealed up and sent forthwith to the Governor of said Territory, at Carson City, by mail or otherwise, by the commanding officer, who shall also make out and certify duplicate returns of votes given according to the forms hereinafter prescribed, seal up and immediately transmit the same to the said Governor, at Carson City, by mail or otherwise, the day following the transmission of the ballots and voting list herein named.

SEC. 12. The form of returns of votes to be made by the commanding officers to the said Governor shall be as follows:

Returns of soldiers' votes in the (here insert the regiment, detachment, battalion, squadron, or battery.)

(For first election—On the Constitution.)

I, ——, hereby certify, that on the first Wednesday of September, A. D. eighteen hundred and sixty-four, the electors belonging to the (here insert the name of the regiment, detachment, battalion, squadron, or battery) cast the following number of votes for and against the Constitution for the State of Nevada, viz:

For "Constitution, Yes."—(Number of votes written in full and in figures.)

Against "Constitution, No."—(Number of votes written in full and in figures.)

(Second election—for State and other officers.)

I, ——, hereby certify, that on the first Tuesday after the first Monday in November, A. D. eighteen hundred and sixty-four, the electors belonging to the (here insert as above) cast the following number of votes for the several officers and persons hereinafter named, viz:

For Governor.—(Names of persons voted for, number of votes for each person voted for written in full, and also in figures, against the name of each person.)

For Lieutenant-Governor.—(Names of candidates, number of votes cast for each written out and in figures as above.)

Continue as above till the list is completed.

Attest: A. B.—

Commanding officer of the (here insert regiment, detachment, battalion, squadron, or battery, as the case may be.)

SEC. 13. The Governor of said Territory is requested to furnish each commanding officer within and beyond the boundaries of said Territory, proper and sufficient blanks for said returns.

SEC. 14. The provisions of this ordinance in regard to the soldiers' votes, shall apply to future elections under this Constitution, and be in full force until the Legislature shall provide by law for taking the votes of citizens of said Territory in the army of the United States.

SEC. 15. Until otherwise provided by the Legislature, the apportionment of Senators and Assemblymen, in the different counties, shall be as follows:——

Mr. HOVEY. I will suggest whether this matter should not be referred to the Committee on Schedule?

Mr. COLLINS. That will be for the Convention to decide.

Mr. HOVEY. I do not see why there cannot be a provision in the schedule consisting of one or two sections, which shall provide for the elections and the return of votes.

Mr. LOCKWOOD. I will move to refer the ordinance to the Committee on the Schedule. I have no hostility to it whatever, but I think that is the committee to which it should properly go.

Mr. COLLINS. I think if my colleague (Mr. Hovey) should undertake to throw this provision into a couple of sections of the schedule, he would find that those sections would be very long indeed; and, besides, the Enabling Act requires these things to be done by ordinance.

Mr. HOVEY. Can they not be done in the Constitution instead of a separate ordinance?

Mr. COLLINS. No, sir; they must be done by ordinance.

The question was taken on the motion of Mr. Lockwood to refer the ordinance to the Committee on the Schedule, and it was agreed to.

JUDICIARY.

Mr. BANKS. I offer the following resolution:

Resolved, That the Judiciary Committee be and they are hereby respectfully requested to report at an early hour to-morrow, on the matters referred to them.

The question was taken, and the resolution was adopted.

BUSINESS BEFORE THE COMMITTEES.

Mr. DUNNE. I would like to inquire of the Chairman of the Committee on Education when we may expect a report from that committee.

Mr. COLLINS. I inquire if it is designed to have a session of the Convention this evening? The Committee on Education would like to meet this evening, if there is to be no session of the Convention.

Mr. BANKS. Then I hope the gentleman will move that when the Convention adjourn, it adjourn until to-morrow.

Mr. McCLINTON. It has been suggested that the committee remain here this evening, after adjournment.

Mr. CHAPIN. Cannot the Committee on the Judiciary report this evening?

Mr. BROSNAN. The Judiciary Committee would be prepared to report at any time, but one of the members, the President of the Convention, has requested the chairman not to present the report until he is here. I expect to meet him during the recess, to confer with him in regard to some matters, and the committee will be prepared to report in the morning.

Mr. COLLINS. Can they not report this evening?

Mr. LOCKWOOD. I thought the Committee on Education desired to meet this evening.

Mr. COLLINS. But if we adjourn now, the Committee on Education can have a meeting at once, and be able to report at an early hour.

Mr. LOCKWOOD. I will suggest that very important matters are before the committee, and we can perfect the report, and perhaps get through with our business sooner, by adjourning until to-morrow. I am rather in favor of adjourning until to-morrow.

Mr. DUNNE. I will make a motion to adjourn now, and I suppose that will carry the Convention over until to-morrow.

The PRESIDENT *pro tem.* The Chair does not so understand it, unless it shall be so stated in the gentleman's motion.

Mr. DUNNE. I do not wish to have an evening session for this reason: that we never can get the committees to work when we have an evening session. The Committee on Schedule has thirty or forty sections to consider, and they ought to meet this evening, and get at least a portion of their work done, so that the Convention may act upon it. They ought certainly to be able to finish the article on Miscellaneous Provisions. They have that article before them, and also the entire schedule, and all the ordinances presented, besides the article in regard to salaries. I will move, in view of the understanding of the Chair, that when the Convention adjourn, it adjourn to meet at nine o'clock to-morrow morning.

The question was taken, and the motion was agreed to.

Mr. DUNNE. Now I move that the Convention adjourn.

The question was taken, and the motion was agreed to.

Accordingly, at four o'clock P. M., the Convention adjourned.

SIXTEENTH DAY.

CARSON, July 21, 1864.

The Convention met at nine o'clock, A. M.

On motion of Mr. BANKS, in the temporary absence of the President, Mr. STURTEVANT was requested to act as President *pro tem.*, and took the Chair.

The roll was called and all the members responded except the following: Messrs. Ball, Crawford, Earl, Fitch, Gibson, Haines, Hudson, Jones, Kinkead, McClinton, Morse, Nourse, Parker, Tozer, Wellington, Williams, and Mr. President. Present, 23; absent, 17.

Prayer was offered by the Rev. Mr. NIMS.

The journal of yesterday was read and approved.

The PRESIDENT *pro tem.* announced that reports of Standing Committees were in order.

RIGHT OF SUFFRAGE.

Mr. HAWLEY. I rise more to a question of privilege than with the view of making a report. As chairman of the Committee on Enrollment, I have to state that I have received from the Enrolling Clerk what purports to be the enrolled copy of Article II, entitled Right of Suffrage. The first page of that article I find to be properly enrolled, except in respect to one letter, which is easily corrected, and I find that the Clerk has followed the copy in the enrolling. But there is one sentence to which I desire to call attention, which reads as follows:

"The Legislature shall provide by law for the payment of an annual poll tax of not less than two nor exceeding four dollars from each male person resident in this State of the ages of twenty-one and sixty years."

Now under the operation of that provision, no man who is over twenty-one years old, unless he has also reached the age of sixty years, could be compelled to pay a poll tax. I will state further, that it was the opinion of one member of the Committee on Phraseology that this was not the language employed in the engrossed copy, but the engrossed copy has since been handed to me and I find that such is not the case. I think this language would exempt from paying a poll tax every man between the ages of twenty-two and fifty-nine. The article is correctly enrolled, according to copy, but as it reads it only provides that those who are just twenty-one, or just sixty years of age, shall pay a poll tax.

Mr. BANKS. As I am a member of the Committee on Phraseology I will take occasion to say that no such document as this, containing any such language as this, has appeared before that committee. I understand that this enrollment is made from a copy of the engrossed article, and not from the engrossed copy itself. I think unquestionably the Enrolling Committee should have that copy to enroll from which the Committee on Phraseology has examined—that is, the original engrossed copy, and not a copy made from it.

Mr. HAWLEY. I think so too, but the Secretary informed me that he did not consider himself authorized to allow the engrossed copy to go out of his hands.

The SECRETARY. The engrossed copy should properly go to the Enrolling Committee, but it should not be placed in the hands of any irresponsible person, outside of the Convention, who might, if so disposed, interpolate anything he pleased. The practice is, that the engrossed copy goes to the Enrolling Committee and they compare that with the enrolled copy.

The PRESIDENT *pro tem.* In the opinion of the Chair the Enrolling Committee should compare the enrolled copy with the engrossed copy, and as the Chair understands, they should not make report until they find that it is correctly enrolled.

Mr. DELONG. The effect of this language is, that a man must be eighty-one years old before he can be required to pay a poll tax.

Mr. NOURSE. Yes, sir; twenty-one and sixty—that makes eighty-one years.

Mr. BANKS. I understand the Chair to rule, then, that the examination or comparison must be made with the official engrossed copy.

The PRESIDENT *pro tem.* The Committee on Enrollment has undoubtedly a right to the engrossed article—the original—in order to make a comparison of the two copies, and, if they should discover any errors, the Chair understands that it is the duty of the committee to correct them, or have them corrected, and only to report to the Convention a correctly enrolled copy. It is not to be supposed that it is the duty of the Convention to correct such errors, when they have a committee for that very purpose.

ARTICLES ENGROSSED.

Mr. CROSMAN, from the Committee on Engrossment, reported as correctly engrossed, Article XIII, entitled Militia; Article XIV, entitled Public Institutions; Article XV, entitled Boundary; and Article XVII, entitled Amendments.

The report was accepted, and the several articles placed on file for a third reading.

QUESTION OF PRIVILEGE.

Mr. BROSNAN. I rise now to a question of privilege. On yesterday I made a remark in the Convention in regard to a friend of mine, my colleague from Storey County, (Mr. Fitch), who I regret is not in his seat this morning, but who understands this matter precisely as I do. I was informed yesterday that the remark I had made touching the speech of that gentleman

was supposed to have been intended to apply to the President of the Convention, and now I desire to correct that impression, as I would have done yesterday had I not been prevented by the business before the Convention. Gentlemen will recollect that my colleague (Mr. Fitch) had made a speech, which I must confess I was not pleased with at the time, because I thought it entirely injudicious and out of place. He having quoted a few wise sayings and saws during that speech, I arose and made a reply, which I will repeat in substance. Prefacing my remarks by alluding to my colleague from Storey County, who had just taken his seat, I said that it was the saying of an ancient and very wise philosopher, that we were endowed with but one tongue and two ears, in order that we might hear more and speak less. The remark was addressed to my friend and colleague from Storey County, but I understand that it was understood as having been directed at, or as being an allusion to, the President of the Convention. I regret that there should have been any such impression, for I certainly entertained no idea of that kind.

JUDICIAL DEPARTMENT.

Mr. BROSNAN, from the Committee on the Judicial Department, submitted the following report:

MR. PRESIDENT:—The members of the committee to whom Article VI. entitled Judicial Department, was referred, have carefully considered the subject, and respectfully report the following as the result of their deliberations:

ARTICLE VI.—JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, District Courts, in County Courts, and in Justices of the Peace. The Legislature may also establish Courts, for municipal purposes only, in incorporated cities and towns.

SEC. 2. The Supreme Court shall consist of a Chief Justice and two associate Justices, a majority of whom shall constitute a quorum; *provided*, that the Legislature, by a majority of the members elected to each branch thereof, may, at its second session, or any time thereafter, provide for the election of two additional associate Justices, and if so increased, three shall constitute a quorum. The majority of the whole Court shall be necessary to render a decision.

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at the general election, as provided by law, and shall hold office for the term of six years from the first day of January next succeeding their election; *provided*, that there shall be elected at the first election under this Constitution, three Justices of the Supreme Court, who shall hold office from the time of their election and qualification, and continue in office thereafter two, four, and six years respectively, from the first day of January next succeeding their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall classify themselves, and determine by lot the term of office each shall fill, and the Justice drawing the shortest term shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the senior Justice in commission shall be Chief Justice.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also, in all cases at law in which is involved the title or the right of possession of real estate or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand (exclusive of interest) or the value of property in controversy exceeds three hundred dollars; also, in other civil cases not included in the general sub-divisions of law and equity, and also in all criminal cases in which the offense charged amounts to felony, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of *habeas corpus* to any part of the State, upon petition on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any District Court, or any County Court in the State, or before any Judge of said Courts.

SEC. 5. The State is hereby divided into nine Judicial Districts, of which the County of Storey shall constitute the first; the County of Ormsby the second; the County of Lyon the third; the County of Washoe the fourth; the Counties of Nye and Churchill the fifth; the County of Humboldt the sixth; the County of Lander the seventh; the County of Douglas the eighth; and the County of Esmeralda the ninth. The County of Roop shall be attached to the County of Washoe for judicial purposes, until as herein otherwise provided by law. The Legislature may, however, by a vote of two-thirds of all the members elected to each branch thereof, provide by an alteration in the boundaries or division of the districts herein prescribed, or otherwise, for increasing or diminishing the number of the Judicial Districts and Judges therein; but no such change shall take effect except in case of a vacancy, or the expiration of the term of an incumbent of the office. At the first election under this Constitution, there shall be elected in each of the respective districts, (except as in this section hereafter otherwise provided,) one District Judge, who shall hold office from the time of his election and qualification until the first day of January, in the year one thousand eight hundred and sixty-seven. After the said first election, there shall be elected at the general election which immediately precedes the expiration of the term of his predecessor, one District Judge in each of the respective Judicial Districts (except in the first district, as in this section hereinafter provided.) The District Judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of four years (excepting those elected at said first election) from the first day of January next succeeding their election and qualification; *provided*, that the first Judicial District shall be entitled to and shall have two District Judges, who shall possess co-extensive and concurrent jurisdiction, and who shall be elected at the same time, in the same manner, and shall hold office for the like terms, as herein prescribed in relation to the Judges in other Judicial Districts.

SEC. 6. The District Court in the several Judicial Districts of this State, (except in the First District, for which distinct provision is otherwise made in this article,) shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title to or the right of possession of real property, or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand (exclusive of interest) or the value of the property in controversy exceeds three hundred dollars; also, in all cases relating to the estates of deceased persons, and of the action of forcible entry and unlawful detainer, and also, in all criminal cases, not otherwise provided for in this Constitution, under such regulations as may be prescribed by law. They shall also have appellate jurisdiction in cases arising in Justices' Courts, and other inferior tribunals, as the Legislature may prescribe. The District Courts and their judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs necessary to the complete exercise of their jurisdiction; and also, shall have power to issue writs of habeas corpus, on petition by or on behalf of any person held in actual custody in their respective districts.

SEC. 7. The District Court in the First Judicial Dis-

trict shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title or the right of possession to or the possession of real property, or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand (exclusive of interest) or the value of the property in controversy exceeds five hundred dollars; also, in all other civil cases not provided for in this Constitution, and also in all criminal cases where the punishment may be death. The said District Courts and the Judges thereof, shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs necessary to the complete exercise of its jurisdiction; and also, shall have power to issue writs of habeas corpus, on petition by or on behalf of any person held in actual custody in said district.

Sec. 8. There shall be established in the County of Storey a County Court, having one Judge, who shall be elected at the general election by the qualified electors of the county, and shall hold his office for the term of four years, from the first day of January next preceding his election, except that at the first election under this Constitution, a County Judge shall be elected in said county, who shall hold his office until the first day of January, one thousand eight hundred and sixty-seven, and after said first election a County Judge shall be elected in said county, at the election which immediately precedes the expiration of the term of his predecessor, and shall hold office for the term of four years from the first day of January next after his election. And the Legislature may provide by law for the organization of County Courts in other counties, as the public good may require, and may prescribe their powers, duties, and jurisdiction, in conformity with this Constitution.

Sec. 9. The County Court of Storey County shall have original jurisdiction in actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; and in all civil cases, (except those wherein the title, or the right of possession to, or the boundaries of real estate or mining claims may be involved,) in which the matter in dispute is a money demand or personal property, and the amount of the demand (exclusive of interest) or the value of the property is over three hundred and does not exceed five hundred dollars; and also in such special cases and proceedings as are not herein otherwise provided. The said Court shall also have final appellate jurisdiction in all cases arising in Courts held by Justices of the Peace in said county, and in such inferior courts as may be established therein in pursuance of Section 1 of this article. The said Court shall also have original jurisdiction over the estates of deceased persons, and of the persons and estates of minors and insane persons; and also in criminal cases, in which the offense is not punishable by death, and which are not otherwise provided for in this Constitution. The Grand Jury for the county shall be impanneled in and make their presentments and findings of indictments to the said Court; and all indictments of the trial of which the said County Court has not jurisdiction, shall be transferred for trial by order of the said Court, to the District Court of the said county. The County Courts, in counties where such officers shall have been elected, and their judges, shall also have power to issue writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties; and said Courts, and the judges thereof, shall have power to issue all other writs necessary to the complete exercise of their jurisdiction.

Sec. 10. The times and places of holding the terms of the Supreme Court, the general and special terms of the District Courts within the several districts, and of County Courts, shall be provided by law.

Sec. 11. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and shall fix by law their powers, duties, and responsibilities. It shall determine the manner and the cases in which appeals may be taken from Justices' and other Courts; *provided*, such powers shall not in any case conflict with the jurisdiction of the several Courts of Record; and further, that such Justices' Courts shall have no jurisdiction in the trial of cases wherein the trial to real estate or mining claims, or the right of possession, is or may be involved. The Supreme Court, the District Courts, the County Courts, and such other Courts as the Legislature shall designate, shall be Courts of Record.

Sec. 12. The Legislature shall prescribe the powers, duties, and responsibilities of any Municipal Court that may be established in pursuance of Section 1 of this article; and shall so fix by law the jurisdiction of said Court as not to conflict with that of the several Courts of Record.

Sec. 13. No judicial officer, except a Justice of the Peace, shall receive to his own use any fees or perquisites of office.

Sec. 14. The Justices of the Supreme Court, and the District Judges, shall be ineligible to any office other than a judicial office during the term for which they shall have been elected, and all elections or appointments of any such Judges by the people, Legislature, or otherwise, during said period, to any office other than judicial, shall be void.

Sec. 15. Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law.

Sec. 16. The style of all process shall be, "The State of Nevada," and all prosecutions shall be conducted in the name and by the authority of the same.

Sec. 17. There shall be but one form of civil action, and law and equity may be administered in the same action, in Courts of Record.

Sec. 18. The Justices of the Supreme Court, District Judges and County Judges, in counties wherein such officers shall have been elected, as provided for in this Constitution, shall each receive quarterly, for their services, a compensation to be fixed by the Legislature, and which shall not be increased or diminished during the term for which they shall have been elected. And the Legislature shall provide for setting apart from each year's revenue a sufficient amount of money to pay such compensation; *provided*, that District Judges and County Judges shall be paid out of the county treasuries of their respective districts and counties.

Sec. 19. The Legislature at its first session shall prescribe that upon the institution of each action, and other proceeding, and also upon the perfecting of an appeal in any action or proceeding, in the several Courts of Record in this State, a special Court fee or tax, to be fixed by law, shall be advanced to the Clerks of said Courts respectively, by the party or parties bringing such action or proceeding, or taking such appeal; and the money so paid in shall be accounted for by such clerks and applied towards the payment of the compensation of the Judges of said Courts, as shall be directed by law.

Sec. 20. The Legislature shall have no power to grant leave of absence to a judicial officer, and any such officer who shall absent himself from the State for upwards of ninety consecutive days shall be deemed to have vacated his office.

Sec. 21. In order that no inconvenience may result to the public service from the taking effect of this article, no judicial officer shall be superseded, nor shall the organization of the several courts be changed thereby, until the election and qualification of the several officers provided for in the same.

All of which is respectfully submitted,

C. M. BROSNAN, Chairman.

IMPEACHMENT AND REMOVAL.

Mr. BROSNAN, from the Committee on the Judiciary, to which had been referred Article VII, entitled Impeachment and Removal from Office, submitted the following report:

MR. PRESIDENT:—Your Committee on the Judiciary has had under consideration Article VII, relating to Impeachment and Removal from Office, and report that they have amended said article by striking out Section III, and recommend that the Convention concur in said amendment. In the judgment of your committee the article divested of Section 3, contains all the ordinary checks and safeguards, and that the same are

amply sufficient for the prevention and punishment of official misconduct and dereliction of duty. The section endangers the stability of the judicial department, and in its provisions exposes its officers to the assaults of individuals who may be actuated by personal spleen and animosity, whilst it leaves an opportunity to corrupt the Legislature into an access of strife upon trifling questions and for unimportant causes.

All of which is respectfully submitted.

C. M. Brosnan, Chairman.

Mr. DuLONG. I move that these reports be received and placed on file.

THE JUDICIARY.

Mr. JOHNSON. If the gentleman will withdraw his motion I will make a suggestion, that the bill accompanying the report of the Judiciary Committee—the Article on the Judicial Department—be printed. That article embodies some very material and radical changes, and it is quite impossible for members to fully comprehend the subject without having it before them in a printed shape. This article, and possibly one or two other matters, will in all probability be the only matters, not already disposed of, which the Convention will find it necessary to order printed, for the reason that for the most part we have followed in the track of the old Constitution. This article, however, is an exception, and as it involves very important changes I hope it will be printed.

Mr. DuLONG. I will withdraw the motion, but I think we ought to go on with the consideration of the article to-day.

Mr. JOHNSON. I am informed by one of the newspaper Reporters that to-morrow morning he can have the article printed in his report. If we can obtain it in the morning papers, there will be no necessity for further printing, and under the circumstances, I will withdraw the motion to print.

Mr. BROSNAN. I was about to state that the President of the Convention, who is a member of the Judiciary Committee, does not agree with the report of the majority of that committee in two particulars, as I understand: First—he desires that the Supreme Court shall consist of five Judges; and secondly, he is opposed to the tax, or docket fee, which is provided for in the report, for the purpose of aiding in defraying the expenses of the judiciary.

Mr. JOHNSON. I desire to say further, that I do not know that I assent—as I have not examined the subject—in relation to striking out Section 3 of the article on Impeachment and Removal from Office.

SALARIES.

Mr. DuLONG, from the Committee on the Schedule, submitted the following report:

Mr. President:—Your Committee on Schedule, to whom was referred the substitute for Article XI as first introduced, beg leave to report that they have had the same under consideration, and recommend the following amendments:

1st—Strike out in line 1 of Section 1, the word "years," and insert instead the words "term of office."

2d—Fill blanks in lines 4 and 6 of Section 1, by inserting the words "four thousand."

3d—Fill blank in line 7, Section 1, by inserting the words "three thousand six hundred."

4th—Fill blank in line 10, Section 1, by inserting the words "three thousand six hundred."

5th—Fill blank in lines 12 and 13, Section 1, by inserting the words "three thousand six hundred."

6th—Fill the blank in lines 15 and 16, Section 1, by inserting the words "one thousand."

7th—Fill blank in line 18, Section 1, by inserting the words "two thousand five hundred."

8th—Fill blank in line 20, Section 1, by inserting the words "two thousand."

9th—Fill blank in line 1, (page 2,) of Section 1, by inserting the words "seven thousand."

10th—Insert after the word "annum," in line 2, (page 2,) Section 1, the words "the salary of the foregoing officers shall be paid quarterly."

11th—Fill blank in line 5, (page 2,) Section 1, by inserting the word "six."

12th—Fill blank in line 7, (page 2,) Section 1, by inserting the words "forty cents," and add after the word "mileage," in same line, the words "going and returning."

13th—Add to Section 1, the words following: "No officer mentioned in this section shall receive any fees or perquisites to his own use for the performance of any duty connected with his office, or for the performance of any additional duty enjoined upon him by law."

14th—Strike out Section 2.

15th—Strike out Section 3.

All of which is respectfully submitted.

C. E. DuLong, Chairman.

The report was accepted, and the article, with the amendments reported, was referred to the Committee of the Whole.

MISCELLANEOUS PROVISIONS.

Mr. DuLONG, from the Committee on the Schedule, etc., also submitted the following report:

Mr. President:—Your committee, to whom was referred Article XVI, entitled Miscellaneous Provisions, have had the same under consideration, and respectfully report the following amendments, and recommend the adoption of the article as amended:

1st. Strike out the word "six," in line four, Section 1, and insert instead the word "three."

2nd. In Section 7, strike out all after the words "Section 7," down to and including the word "recorders," in line 2, and insert in lieu thereof the words "all county officers."

3rd. Amend Section 8 by striking out all after the word "Courts," in line eight of said section.

4th. Amend Section 9 by striking out, in lines one, two, and three, the words, "by a vote of two-thirds of the members elected to each branch thereof;" and strike out the parenthesis, and words "except judicial," in line five of said section.

5th. Strike out Section 12.

6th. Amend Section 16 of printed copy by striking out the figure "4" in line three, and insert in lieu thereof the figure "3."

All of which is respectfully submitted.

C. E. DuLong, Chairman.

The report was accepted, and the article was referred to the Committee of the Whole, together with the amendments reported.

Mr. DUNNE, from the same committee, presented the following as a minority report:

Mr. President:—The undersigned, of the Committee on Schedule, to which was referred Article XVI, entitled Miscellaneous Provisions, respectfully submits a minority report dissenting from the recommendation to so amend Section 7, of Article XVI, as to require all county officers to reside at the county seats of their respective counties.

Dunne.

The report was received and placed on file.

THE ORDINANCE.

Mr. DeLONG. The Committee on Schedule have not yet had the ordinance, introduced by my colleague, (Mr. Collins,) under consideration, except in so far as to ask that it be printed. It is very hard to understand it unless it is in print, inasmuch as it is very long, containing minute provisions.

Mr. CROSMAN. My understanding of that ordinance, as it was read yesterday was, that it contained a good deal that was likely to be provided for in the schedule, or which was by the last Convention embraced within the schedule, and I thought it probable that when the Committee on the Schedule should report, we could compare that report with the ordinance, and if there should be anything not embraced in the report of the Committee on Schedule, it could then be added or otherwise provided for.

Mr. JOHNSON. If I recollect aright, I made a suggestion to the chairman, that it would be well to have it printed, but I am informed that it was copied yesterday by the reporters, and will be likely to appear in the Virginia papers to-morrow morning. I am very desirous that we may have it in a printed form.

Mr. DeLONG. I certainly do not wish to incur any unnecessary expense, and will therefore withdraw the motion to print.

LEAVE OF ABSENCE.

Mr. COLLINS asked that indefinite leave of absence be granted to his colleague, (Mr. Toner,) who had received a dispatch requiring his attendance in San Francisco on business of importance.

Mr. NOURSE. Is the mining question disposed of entirely? I only want to know. [Laughter.]

The question was taken, and indefinite leave of absence was granted to Mr. Toner.

Mr. DeLONG. I am requested to ask the same leave of absence for my colleague (Mr. Earl.)

Mr. CHAPIN. I doubt the propriety of granting indefinite leave of absence to so many members. The first we know, we shall find ourselves without a quorum. I will suggest that we grant him leave of absence only for to-day.

Mr. DeLONG. I do not think that would do him any good; I think he went home to stay. I will ask leave, however, for this day, and, if necessary, I will ask leave again to-morrow for another day.

The question was taken, and leave of absence for one day was granted to Mr. Earl.

MILITIA.

The Convention proceeded to the third reading of articles on the general file.

Article XIII, entitled Militia, was read a third time, as follows:

ARTICLE XIII.

MILITIA.

SECTION 1. The Legislature shall provide by law for the organizing and disciplining the militia of this State, for the effectual encouragement of volunteer corps, and the safe keeping of the public arms.

SEC. 2. The Governor shall have power to call out the militia to execute the laws of the State, or to suppress insurrection or repel invasion.

The question was taken on the final passage of the article, by yeas and nays, and the vote was—yeas, 28; nays, none—as follows:

Yeas—Messrs. Banks, Beldon, Brady, Brosnan, Chapin, Collins, Crosman, DeLong, Dunne, Friedl, Folsom, Gibson, Hawley, Hovey, Kennedy, Lockwood, Mason, McClinton, Murdock, Nourse, Proctor, Shortevant, Tuglaben, Warwick, Wetherill, and Mr. President—28.

Nays—None.

So the article was passed.

PUBLIC INSTITUTIONS.

Article XIV, entitled Public Institutions, was read a third time, as follows:

ARTICLE XIV.

PUBLIC INSTITUTIONS.

SECTION 1. Institutions for the benefit of the insane, blind, and deaf and dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be prescribed by law.

SEC. 2. A State Prison shall be established and maintained in such manner as may be prescribed by law, and provision may be made by law for the establishment and maintenance of a House of Refuge for juvenile offenders.

SEC. 3. The respective counties of the State shall provide, as may be prescribed by law, for those inhabitants who by reason of age and infirmity, or other misfortunes, may have claim upon the sympathy and aid of society.

Mr. BROSNAN. The word "other," in the third section," comes in rather unfortunately there. It says "by reason of age and infirmity, or *other* misfortunes." Now we do not mean surely to say that age is a misfortune. Infirmity may be a misfortune, but I do not look upon age in that light.

Mr. BANKS. I view that matter in pretty much the same light as the gentleman from Storey, and I think we had better strike out that word "other." It can be done by general consent, and the sentence will then read correctly—"who by reason of age and infirmity, or misfortunes, may have claim upon the sympathy and aid of society."

By unanimous consent, the Secretary was instructed to strike out the word "other" in Section 3.

The question was then taken by yeas and nays upon the final passage of the article, and the vote was—yeas, 28; nays, none—as follows:

Yeas—Messrs. Banks, Beldon, Brady, Brosnan, Chapin, Collins, Crosman, DeLong, Dunne, Friedl, Folsom, Gibson, Hawley, Hovey, Kennedy, Lockwood, Mason, McClinton, Murdock, Nourse, Proctor, Shortevant, Tuglaben, Warwick, Wetherill, and Mr. President—28.

Nays—None.

So the article was passed.

BOUNDARY.

Article XV, entitled Boundary, was read a third time, as follows:

ARTICLE XV.

BOUNDARY.

SECTION 1. The boundary of the State of Nevada shall be as follows:

Commencing at a point formed by the intersection of the thirty-eighth degree of longitude west from Washington, with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the eastern boundary line of the State of California; thence in a northwesterly direction along the said eastern boundary line of the State of California to the forty-third degree of longitude west from Washington; thence north along said forty-third degree of west longitude, and said eastern boundary line of the State of California, to the forty-second degree of north latitude; thence due east along the said forty-second degree of north latitude to a point formed by the intersection with the aforesaid thirty-eighth degree of longitude west from Washington; thence due south down said thirty-eighth degree of west longitude to the place of beginning.

And whenever Congress shall authorize the addition to the Territory or State of Nevada of any portion of the territory on the eastern border of the foregoing defined limits, not exceeding in extent one degree of longitude, the same shall thereupon be embraced within and become a part of this State. *And furthermore provided*, that all such territory lying west of and adjoining the boundary line herein prescribed, which the State of California may relinquish to the Territory or State of Nevada, shall thereupon be embraced within and constitute a part of this State.

Mr. JOHNSON. I would prefer to have the consideration of this matter laid over to some future time, for I think there is a misapprehension in regard to it. As I understand the Enabling Act, the boundary of the State, as proposed by us, is co-extensive with that of the Territory. It seems to be apprehended that as the boundary is defined by the Enabling Act, one degree is left off on our eastern border, as I understood the gentleman from Storey (Mr. Brosnan) to say. Am I correct in that?

Mr. BROSNAN. I did not have time to examine it thoroughly yesterday, but I thought that was the case—that the Enabling Act did not give us as much as was given in the old Organic Act.

Mr. JOHNSON. The boundary line as laid down in the old Constitution embraced an additional degree, only in case it should be conceded by subsequent enactment of Congress.

Mr. NOURSE. I incline to think that the gentleman from Storey has confounded the thirty-seventh degree of latitude with the thirty-seventh degree of longitude. In this Enabling Act the boundary begins at the southeast corner, running thence due west, while in the Organic Act it began at the northeast corner, and ran thence due south.

Mr. COLLINS. I would ask if this article was not referred to a committee yesterday, together with the Act of Congress, for comparison?

Mr. NOURSE. It was agreed to adopt the language of the Enabling Act; that was the motion which was carried.

Mr. COLLINS. I have here the Act of 1862, which extends the boundary one degree.

Mr. JOHNSON. If the language of the Enabling Act has been adopted, then I have no further objection.

Mr. CHAPIN. The exact language of the Enabling Act was adopted, and by that, I take it, we must be governed.

Mr. JOHNSON. There is no doubt as to that. The question was taken by yeas and nays, on the final passage of the article, and the vote was—yeas, 36; nays, none—as follows:

Yeas—Messrs. Banks, Bolton, Brady, Brosnan, Chapin, Collins, Crosman, Dunne, Friedl, Folsom, Gibson, Hawley, Hovey, Kennedy, Lockwood, Mason, McClinton, Murdock, Nourse, Proctor, Shortevant, Tagliabue, Warwick, Wetherill, and Mr. President—36.

Nays—None.

So the article was passed.

AMENDMENTS.

Article XVII, entitled Amendments, was read a third time, as follows:

ARTICLE XVII.

AMENDMENTS.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if in the Legislature next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become a part of the Constitution.

SEC. 2. If at any time the Legislature, by a vote of two-thirds of the members elected to each House, shall determine that it is necessary to cause a revision of this entire Constitution, they shall recommend to the electors at the next election for members of the Legislature to vote for or against a Convention, and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention to be holden within six months after the passage of such law, and such Convention shall consist of a number of members not less than that of both branches of the Legislature. In determining what is a majority of the electors voting at such election, reference shall be had to the highest number of votes cast for the candidates for any office, or on any question, at such election.

The question was taken by yeas and nays upon the final passage of the article, and the vote was—yeas, 24; nays, none—as follows:

Yeas—Messrs. Banks, Bolton, Brady, Brosnan, Chapin, Collins, Crosman, Dunne, Friedl, Folsom, Gibson, Hawley, Hovey, Kennedy, Lockwood, Mason, McClinton, Murdock, Nourse, Proctor, Shortevant, Tagliabue, Wetherill, and Mr. President—24.

Nays—None.

So the article was passed.

Mr. CROSMAN. I move that the Convention resolve itself into Committee of the Whole, the President in the Chair, for the consideration of the general file.

Mr. JOHNSON. Will it be necessary to con-

sider all these articles which have been reported in Committee of the Whole? They have, with the exception of the article on the Judicial Department, I believe, been considered in Committee of the Whole, and I think we can dispose of them without the necessity of further consideration in committee.

Mr. CROSMAN. I apprehend that Article XI, the article on Salaries, will probably provoke considerable discussion, and we may succeed better, in Committee of the Whole, in harmonizing the views of members, although I am not particular about it. My idea was to go into Committee of the Whole on the general file, and if we find anything there which we do not want to discuss, we can report it back without delay.

[The PRESIDENT in the Chair.]

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, the President retaining the Chair, and proceeded to the consideration of articles on the general file.

IMPEACHMENT AND REMOVAL FROM OFFICE.

Article VII, entitled Impeachment and Removal from Office, was first taken up.

Section 1 was read, as follows:

SECTION 1. The Assembly shall have the sole power of impeaching, but a majority of all the members elected must concur in an impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose the Senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the Senators elected.

Mr. NOURSE. I will inquire if provision is made elsewhere that the Lieutenant-Governor shall not sit in case the Governor is to be tried on impeachment?

The CHAIRMAN. I think there is no such provision.

Mr. NOURSE. I suppose it is manifestly proper that there should be, because in case of the Governor's removal, the Lieutenant Governor becomes Governor in his place, and therefore it would be improper to allow him to preside upon the trial of the Governor on impeachment.

Mr. BROSNAN. In that case the Senate would appoint a President *pro tem.*, who would be the presiding officer of the Senate.

Mr. NOURSE. But the Lieutenant Governor would be the Governor in the event of the Governor's removal. If he does not preside over the Senate at the trial, he none the less takes the Governor's place. There is a provision in the United States Constitution in regard to the Vice President presiding over the Senate, which is, that when the President of the United States is to be tried, the Chief Justice of the Supreme Court shall preside over the Senate. I do not know how that would strike other gentlemen, but it seems to me we might well adopt a similar provision in our Constitution.

The CHAIRMAN. The gentleman can propose an amendment to conform to that if he wishes, so that when the Governor is tried, the Chief Justice of the Supreme Court shall preside over the Senate.

Mr. NOURSE. I will move to amend the section by inserting before the last sentence, and after the words "law and evidence," these words:

"The Chief Justice of the Supreme Court shall preside over the Senate, while sitting to try the Governor upon impeachment."

The question was taken, and the amendment was agreed to.

Section 2 was read, as follows:

SECTION 2. The Governor and other civil officers under this State Government, shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust, under this State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

No amendment being offered, Section 3, (as reported by the Judiciary Committee,) was read, as follows:

SECTION 3. Provision shall be made by law for the removal from office of any civil officer, for malfeasance or nonfeasance in the performance of his duties.

[Mr. STURTEVANT in the Chair.]

Mr. BROSNAN. There was a recommendation by the Committee on the Judicary, that Section 3, as contained in the original article, be stricken out.

Mr. DUNNE. It would be proper, I suppose, to take a vote upon concurring in the recommendation of the committee to strike out that section.

The CHAIRMAN. I am informed by the Secretary that the Convention concurred in the report, which was then received and placed on file. That is equivalent, I suppose, to striking out the section.

Mr. NOURSE. I suppose the receiving of the report is a different matter altogether from the adoption of the report, and I think, although the report may have been received, that it has not been adopted, because I have not heard the subject mentioned before.

The CHAIRMAN. It occurs to the Chair that when a report is made from a committee, that report should be read, so as to let members know what they are doing, and then if the Convention does not see fit to concur with the report, it can vote to disagree or amend it.

Mr. NOURSE. The point I make is that the receiving of the report does not adopt it.

Mr. CROSMAN. I will move, if it is in order, that the Committee of the Whole recommend the adoption of the report of the Judiciary Committee striking out Section 3.

Mr. NOURSE. I would like to move, or have some one else move, to non-concur in that

recommendation, because I would like to say a few words upon it.

Mr. BANKS. I think the matter stands in this way: that the committee have reported only Sections one, two, and three, of Article VII, and recommend the passage of the article in that form; and if gentlemen desire a provision equivalent to that contained in Section 3 of the original article, they can simply move to incorporate it, and that will bring up the whole matter. The report of the committee can certainly be amended.

Mr. NOURSE. I will move, then, if it be practicable, that Section 3, as printed, be added, and also, that Section 4, or Section 5 as it is numbered, evidently by mistake, in this printed basis, be adopted in addition.

Now I wish to state my reasons, and I think they are such as will commend themselves to the Convention. They are drawn from observation, but not from Minnesota, this time.

Mr. BANKS. Nor California?

Mr. NOURSE. That is another point altogether. I say there are so many cases where valid reasons may exist for the removal of an officer, although there may not be sufficient cause for impeachment, that I think there should be a provision of this kind. A stupid judge is as bad as a dishonest one, and so is a judge whose habits are such as to disgrace, not only the bench, but the community in which he lives; and yet you cannot get at such a judge without a provision of this kind, unless he commits some wrongful act in the discharge of his duties. There are innumerable cases of men whose incompetency, or something worse, unfits them for the bench, and prevents their doing any good upon it, and yet who cannot be impeached. Cases of this kind occur more frequently in new States, where men are not generally acquainted with each other, than they do in the old States, and yet I have seen in the old States instances where it was considered expedient and desirable to abolish an entire court and establish a new court, with a new name, merely for the sake of getting rid of one man on the bench, who was thoroughly incompetent, but whom they could not impeach, because they could not show that he had done any act which should subject him to impeachment—such as taking bribes, or any other illegal act, which would be ground of impeachment. Now the proposition in Section 3, is to the effect that such an incumbent may be removed by the Governor, upon the address of two-thirds of the members of the Legislature. There appears to be a double check—first, the requirement of a two-thirds vote, and next, the act of the Governor making the removal—and thus it would seem to be rendered certain that no removal will or can be made, unless it is absolutely necessary that the man should be removed.

Still, I think where there are grounds for impeachment, the judge should only be removed by impeachment, although where there is not sufficient ground for impeachment, there should still be a power of removal, for the sake of the public interests. I hold that if a judge has done anything for which it can be claimed that he should be impeached, he is so much entitled to a trial, with all the forms of law, as he would be if he were charged with stealing. Nevertheless, as I have said, there are so many other cases of judges who are unfitted for their places, upon other grounds than those upon which they might be impeached, that it seems to me we should be placing ourselves in a bad fix, for the first few years especially, if we provided for no other way of getting rid of an incompetent judge than by impeachment. I say this with a full and perfect appreciation of the proposition, that the judiciary should be placed above the reach of political influences. No man desires more than I do that the judges shall be in a position to be independent of the other departments of the Government, so far as that may be practicable. I desire that this amendment shall be adopted, because it is not merely a matter of theory, in my judgment, but also a matter of practice, which has been approved in many of the old States; and I believe that it is a matter of necessity that the provision should be adopted, inasmuch as there are frequently cases which cannot be reached by impeachment.

Mr. BROSNAN. I wish to say only a few words upon this subject, and probably I will not recur to it again. I think this is a dangerous section, and for this reason: that under it any individual may make accusation in the Legislature against a judge, and probably it would be done very often for the trifling causes which the gentleman from Washoe (Mr. Nourse) has indicated—as for instance, that he is a stupid judge. Now the community at large might differ as to the qualifications of a judge, and his ability, from my friend from Washoe, or any one else who might bring a charge against him. They might measure the man's brains upon a different scale from that which you or I would employ. You, Mr. Chairman, might estimate a man's ability by the volume of his brain or by his intellectual manifestations, and other men might measure him by some different standard, and thus the community would differ entirely in their estimate upon that test of qualification.

There is greater force in the gentleman's argument when he refers to the matter of bad habits, although even in that respect men in the same community would differ. Men do not agree upon what would amount to a decidedly bad habit, and what would amount only to a tolerably bad one, or one which should not exclude a man from so honorable a position as that of a judicial officer. There would be differences of opinion in respect to what would suffice to place a man without the pale of respectability, as compared with his neighbors who may be in high standing in the community. I will state, further, that lawyers very often

complain of judges in consequence of their decisions. When they get beaten in the courts—and some lawyers do get beaten many times before the same judge—they are apt to be dissatisfied with his decisions, and in such cases you will hear them clamoring on the streets, or in the social circle, and asserting that the judge is an ass, and not fit to be a judge, because he decided so and so, in such and such a case, which decision they will insist is a thing unheard of. In the course of my experience, I have frequently heard such remarks in reference to judges. Now in a case of that kind, the lawyer would be apt to estimate the judge in the same manner as the gentleman from Washoe does, when he refers to some judges as being stupid; whereas, if the decisions of the judge had been the other way, the lawyer would have been exactly suited with him, and would have regarded him as a model of perfection. And then, if stupidity were to be made a sufficient cause for removal, the opposite attorney would be liable to turn around and utter the same sort of exclamations, and manifest the same dissatisfaction. In whichever way the judge might decide a case, the disappointed party, or the counsel for the losing side, would be dissatisfied; and they might have friends in the Legislature who would be induced to look upon the decision as a reasonable cause for removal from office, and would be likely to use all the influence which they could bring to bear upon the question. In that way every judge would be liable to be acted upon by political influences, or, if you please, by individual pique or private revenge, and thus the Legislature would be converted into a gladiatorial arena, and controversies of this nature might consume a greater portion of each and every session. No question could come before the Legislature which would be calculated to arouse the contending passions of men more than a question of this kind.

Again, there would be this evil effect: that after a man has made the attempt to remove a judge, and failed in it, although that judge whom he has sought to displace from office were as chaste and pure as snow in his high calling, yet his usefulness would be destroyed in the community. He loses, if not his own self-respect, the respect of many in the community in which he has officiated. And, Mr. Chairman, if he were as wise as a Mansfield or a Bacon, yet if he possessed the pride and sense of honor of a man, his sensitiveness would impel him—mine would, at least, in such a case—to resign that office. He would take that course, although perhaps no other man might be able to discharge its duties better, or more to the satisfaction and for the benefit of that community. For these reasons, for the sake of the stability of the judiciary, and that the respect which is due to it may be secured, to a certain extent, at least, so far as is consistent with the just and honorable discharge of its duties, I am in favor of sustaining the report of the committee.

Mr. BANKS. It would be of no use for me to repeat the arguments against the incorporation of this provision which have been so often presented, for they would be precisely the same arguments with which nearly every member of the Convention is familiar, and upon which, or with reference to which, in nearly all the States of the Union, it has been decided to be desirable to preserve the independence of each department of the government. There is nothing I could say that would add strength and force to the arguments upon that point, with which all are so familiar, and therefore I will not consume the time of the Convention in repeating them. But there is one question I would like to ask of some gentleman who has had an opportunity of giving this subject more attention than I have been able to devote to it, and it is this: Do not the objectionable features embodied in Section 3, as here printed, and in the provision which has been sent to the Secretary's desk by the gentleman from Washoe, exist in Section 4, (or Section 5 as it is numbered by mistake in the printed copy,) which I understand the Judiciary Committee have reported in favor of? That section reads thus:

"Provision may be made by law for the removal from office of any civil officer, for malfeasance or nonfeasance in the performance of his duties."

That, I understand, applies to judicial officers as well as others. It says "civil officer,"—that is, not military officers—and, of course, it includes the judiciary. They may be removed "for malfeasance or nonfeasance;" that means the "mal," or wrong performance, or the nonfeasance or failure to perform the duties required of them by law. It seems to me—and if I am wrong, I would like to be set right—that the last section reported in favor of by the Judiciary Committee, really involves all the power contemplated by the gentleman from Washoe (Mr. Nourse) in offering his amendment to reinstate Section 3, and if we wish to carry out the views of the Committee on the Judiciary, we can do so, in my judgment, only by striking out that section.

Mr. NOURSE. My view is, that that section only applies to those cases which are not specially provided for in the preceding sections.

Mr. BANKS. Then I understand the gentleman's explanation to be that this section would not embrace judges, because they are specially provided for above.

Mr. NOURSE. That is my impression.

Mr. BANKS. It occurs to me that the letter of this section, (numbered five in the printed basis, apparently by mistake,) does include all the State officers. It occurs to me that whatever may be the spirit or intent of that section, the letter of it does clearly provide for a power which we admit to be a dangerous one. I call the attention of gentlemen to that section, and to its wide scope and application, and I trust that we shall not only vote it down, but provide against the dangerous power which this section, four, or five, in its letter involves.

Mr. JOHNSON. I was not present with the committee when it was resolved to strike out this final section, and I am undevised as to the arguments there presented on the question of striking out; but it is a subject to the investigation of which I have given considerable attention, and I have yet to hear any arguments which will satisfy my mind that it is not proper to retain the provision. I do believe that it is a very important and beneficial provision. Now my learned friend from Storey (Mr. Brosnan) recounts some imaginary evils, that possibly might ensue from the adoption of that provision, which, to his mind, seems to be calculated to produce nothing but evil and injurious results; yet the very instances he cites, in my judgment, carry with them arguments in favor of the retention of the provision.

In the first place, sir, when an accusation is made against a person, whether a judicial officer or otherwise, I do not understand that that accusation necessarily carries with it a conviction. I am not aware that the person accused is thereby convicted in the public estimation. On the contrary, the effect is oftentimes the very opposite. All will admit this, that if the charge is of so grave and serious a nature as to induce two-thirds of the members elected to both branches of the Legislature to depose a judicial officer, there must have been substantial grounds for the accusation. If, on the contrary, the accusation is unsustained, in so far that the Legislature refuses to remove from office, the party accused, we know from observation, that not only is the accusation stamped with falsehood and opprobrium, but also that the circumstance gathers around the accused hosts of friends. The fact of unsupported charges being brought against a man, is something which is best calculated, under almost all circumstances, to establish and strengthen the reputation and good name of the person assailed. Parties who may partake of the feelings that are engendered against an individual under such circumstances, when an accusation is made, even those who are disposed to believe in the truth of the charge, if the accuser fails to support it, change their views and opinions, and we find large numbers of the community, even of those who had in the outset no special interest in the controversary, at once becoming the firm friends and zealous adherents and defenders of the person who has been unjustly accused.

Now as to the matter of keeping persons occupying judicial offices free from accusations, we know that is simply impossible, whether the Legislature shall or shall not be clothed with this authority. No man, sir, who has ever occupied a judicial position in this Territory, has been free from envenomed shafts assailing his character, whether justly or unjustly, it is not for me to say. I will only say that such has been our experience in respect to judges, and not only here, but also in California. But few men have occupied judicial positions in that State, from the earliest period in its history to the present day, who have not on some occasion been accused of offenses, or had charges made against them in the public press of such a character that had they been pressed and sustained would have condemned them forever to private life. But that argument, to my mind, makes no difference. I take it, that if the case is sufficiently grave to warrant investigation, it would become the duty and the province of the Legislature, under this provision, to investigate the matter, and if not, it is not likely that any person will be found with the unblushing effrontery to go before the Legislature, and there make and seek to establish such accusations.

And it will be observed that there is a material difference between those cases in which an officer may be impeached, and those in which he may be simply removed from office. It will be seen that the article for impeachment does not embrace all classes of cases in which there may be occasion for removal. The difference to which I refer, consists in this: that a person who has rendered himself liable to impeachment for malfeasance in office, is regarded as guilty of one of the most heinous crimes known to an enlightened government. Hence I say this difference exists, that impeachment not only contemplates removal from office, but also disqualification from holding any office of profit or trust thereafter.

Mr. BROSNAN. And the officer is liable to indictment also.

Mr. JOHNSON. Yes, sir. I am speaking, however, of a simple case of impeachment, but there are causes for removal which should not be made reason for impeachment. I will give an illustration of my meaning: suppose an incumbent of a judicial position, by reason of impaired health, is not able to perform his duties, but yet he may have a desire to retain the salary or emoluments of his office. His pecuniary circumstances may be such as to require him to retain his compensation, if possible, and there may be a thousand other reasons which would impel him to continue in office, although the public interests are thereby made to suffer. There is no power which can compel a resignation—no power under the Constitution and laws by which another can be invested with the prerogatives of the office, so as to exercise its functions, no matter how greatly the public interests may demand it. He can not and should not be impeached—and yet such a case would constitute one of a class which should call for the interposition of the power of removal, that the public interests may be subserved. It is not a case calling for impeachment, but there should be a power lodged somewhere, if the officer refuses to resign, and cannot discharge the duties of his office, to remove him. We do not want to impeach, and say that he shall never hold office thereafter, but we demand some one capable to discharge the duties of that office. But if we strike out this section, where is this power lodged? No-

where. He can hold on to the office and receive the salary, although he performs none of the duties, and the public interests may be suffering at the same time. He can bid defiance alike to the Courts, the Legislature, and the Executive. Instances of this kind might be multiplied.

Now, sir, this provision, as we find it in the old Constitution, is not an experiment. We have precedent for the incorporation of that section into our Constitution, and we need not go further for an example than the native State of many of the members of this Convention, and though not the native State of the gentleman from Storey, (Mr. Brosnan,) yet the one in which he grew from youth to manhood, and in which for years he practiced his profession—a State for whose judicial provisions he has, I am sure, great respect, and whose legislation, I am equally confident, he is not indisposed to regard with favor. I allude, of course, to the State of New York. By referring to Article VI of the Constitution of New York—the Constitution now in force, framed some fourteen years ago, by a Convention, in which were found many of the ablest lawyers of that State, those who had occupied positions upon the bench of the Court of Appeals, and in the inferior Courts—we find that they have adopted a similar provision. Their experience seems to have justified the belief that this was not conferrring a dangerous power. I refer gentlemen to the provisions of Section 1, of Article VI, of the Constitution of New York, which reads thus:

"SECTION 1. The Assembly shall have the power of impeachment by the vote of a majority of all the members elected."

Here, they are in advance of us in the matter of impeachment, providing that a bare majority of the members elect shall have the power of impeachment.

"The Court for the trial of impeachment shall be composed of the President of the Senate, the Senators, or a major part of them, and the Judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor, the Lieutenant-Governor shall not act as a member of the Court. No judicial officer shall exercise his office after he shall have been impeached, until he shall have been acquitted. Before the trial of an impeachment, the members of the Court shall take an oath or affirmation, truly and impartially to try the impeachment according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present."

We go further and declare that it shall require two-thirds of all the members elected to convict.

"Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under this State; but the party impeached shall be liable to indictment and punishment according to law."

That is the section relating to impeachment. Now this language is very similar to that which we have before us, in respect to the removal of officers who are not made subject to impeachment. I refer particularly to Section 11 of the article in the New York Constitution.

SECTION 11. Justices of the Supreme Court and Judges of the Court of Appeals may be removed by concurrent resolution of both Houses of the Legislature, if two-thirds of all the members elected to the Assembly, and a majority of all the members elected to the Senate, concur therein.

The difference, it will be seen, is this, that we require two-thirds of all the members elected to both branches of the Legislature, whilst in New York two-thirds of the Assembly is required, but only a majority of the Senate.

"All judicial officers, except those mentioned in this section, and except Justices of the Peace, and Judges and Justices of inferior Courts, not of record, may be removed by the Senate on the recommendation of the Governor; but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the journals."

Why, sir, here in the State of New York, a State Government which has passed through a history of more than seventy years, men have deemed it not unwise to adopt provisions in this respect far in advance of anything which is proposed by us, in the Constitution we are engaged in framing for the State of Nevada. They have found it expedient to provide that a certain class of officers shall be subject to removal by vote of the Senate alone, on the recommendation of the Governor; and furthermore, as to another class of officers, in cases where there is not a sufficient cause for impeachment and conviction by two-thirds of the Assembly and a majority of the Senate, that they can be removed by mere resolution. And that provision applies to the Judges of the highest Court in the State—the Court of Appeals. Now, sir, although in regard to this matter of removal from office, as I have remarked, they have taken a step far in advance of what is contemplated by Section 3 of our Constitution, nevertheless, I have yet to learn that that provision of the Constitution of New York has ever operated injuriously in any case. I cannot now call to my recollection one instance in the history of that State—other gentlemen more conversant with its history since the adoption of this Constitution may—wherein by this mode, Judges of the higher Courts have been attempted to be removed. I cannot recall a single instance where this power has been sought to be exercised.

And what conclusion do we deduce from this fact? Simply this: that where there is presented to the minds of judicial officers the fact of the existence of a power that may be evoked by the people's representatives, the knowledge of the existence of such a power undoubtedly has a tendency to place those officers on their good behavior, much more than would the knowledge of the fact that they could only be reached by the tortuous and difficult course of an impeachment, where such mode alone can

be resorted to. Knowing the fact that they can be reached with great facility if there is occasion, they have doubtless been more readily disposed to diligence and due attention in performing their duties, discharging them in such a manner as to render needless the interposition of this power. I really believe that the adoption of a provision of this kind would have a most beneficial effect and tendency upon our judicial system. If we place a man in a position where he can bid defiance to all the powers that be, he may be disposed to manifest a kind of independence far different from that character of independence which I desire to see exhibited by judicial officers. My earnest desire is that our judicial officers may be induced to perform their duties in such a manner that no word of reproach or censure can drop from the lips of any man, or find a lodgment in the columns of any newspaper.

I do conceive that it is possible for judicial officers thus to perform their duties. We have known some instances where men in judicial positions have discharged their trusts so acceptably, even at a period when clashing interests and exciting influences surrounded them, to a degree to which history scarcely presents a parallel. There has been at least one judge in the State of California—I do not know as I can with justice extend the number, but there certainly has been one—who has received the approbation of all. Though men have differed from the conclusions of that judge as to matters of law, yet no breath of calumny has ever been uttered against him. I refer to Judge Norton, probably the only instance of the kind afforded in the history of the California judicature; and, perhaps, also in latter days in that of New York. But I say that this single instance proves that it is not impossible for a man to so perform his duties as a judge as not to incur censure and opprobrium. Place a provision here by which the judge can be easily reached, and my word for it, not only will there be less occasion for calumny, but less carping and fault-finding among lawyers and litigants. I do not think there can be any injurious consequences resulting from such a course, and we find a notable precedent for it in the Constitution of New York, although, as we have seen, we do not go even as far as they do.

As to the latter section in this article, I think perhaps it would be better to incorporate in it an additional word or two so as to render it clear that it does not mean to embrace any of the officers mentioned in the preceding sections. That was undoubtedly the sense in which it was adopted originally, and no doubt that would be the judicial construction; but the additional words will obviate any possible objection of that character. As to this Section 3, I hope it will be adopted, at least in its essential features, as we find it in the old Constitution.

Mr. WARWICK. I wish to say a word or two on a subject referred to by the gentleman from Ormsby, (Mr. Johnson,) although it may not be strictly in order. I indorse every word which the gentleman has said in regard to Judge Norton, of California; but in order to show how high is the appreciation which the people have for a good judge, I wish to mention the fact, that after having secured the advantage of his services for a single term, they dropped him without a word, and never so much as offered him a renomination.

Mr. JOHNSON. I hope the gentleman from Lander was not a member of that nominating Convention.

Mr. WARWICK. No, sir; I would have voted for him, if I had been.

Mr. COLLINS. I believe that this provision giving the power to remove judges, had its origin at a time when judges were appointed for life, or during good behavior; and there are many considerations attaching to this matter in those days, which are now removed from our consideration in consequence of the shorter term of our judges. And yet I agree with the gentleman from Washoe, (Mr. Nourse,) that a judge may not come within the scope and meaning of the provision for impeachment by reason of malfeasance, and still that judge may have utterly lost all his influence, and to all intents and purposes may have become entirely worthless as a judge. There are a hundred cases that I might cite, which would illustrate this point. For instance, a judge may be in a state of ill health, languishing with incurable disease, but he may not see his own condition as others see it. He may hang on to his office from year to year in the hope that he will ultimately recover, although others believe there is no possible hope of recovery. Now I say in such a case there should be some provision by which the Legislature, on the recommendation of the Governor, it may be, shall have the power to remove that man; because to allow him to remain, would be practically to destroy or annihilate, for the time being, the Court of whose bench he was the incumbent.

Now when Massachusetts, in 1820, remodeled her Constitution, when those men standing high on the record for their judicial knowledge, ability, and integrity, who had been selected to compose the Convention, came to consider this subject, Massachusetts, by the voice of that Convention, declared that, on the representation of the Legislature, by a majority vote, the Governor, by the consent of the Council, might remove a judge from the bench; and that is the law of Massachusetts at the present time. In all the amendments which have been made by the Legislature of Massachusetts, and all the attempts at remodeling her Constitution, or changing its various articles, which have been made from time to time, that question has never again been mooted, because the provision was found to work admirably there. So it is in Texas: it requires there a two-thirds vote for removal; but in Texas, as with us, they elect their judges for a short term of

years—for six years, I think. In Virginia it only requires a majority of both Houses of the Legislature, on the recommendation of the Governor, to remove a judge. In Ohio it requires a two-thirds vote, but there an officer must be removed, on the recommendation of the Governor, by that two-thirds vote.

Now it occurs to me that a judge may make himself extremely obnoxious, by his associations, by his decisions, or by his social characteristics. He may become so obnoxious to the public as to be worse than worthless, and I contend that our judicial matters are of too high moment to be trifled away by men whose reputation may be lost by reason of their own vices and follies. Would it not be well if Congress had the power to remove a Senator in such case or under such circumstances? Would not the State of California and the whole Pacific coast by that means be relieved of that odium which will attach to them through all time in the future, on account of one man who at the present time disgraces that high station? I have not so much fear that the Legislature will do injustice to a judge, as I have that a judge, by the improper exercise of his power, may do injustice to the people. On the whole, I want this section to remain, because I want to put the judges on their good behavior—because I want to put a power behind them which they may be made to feel—to let them know that there is a power which may be invoked, and which is competent to effect their removal. It makes a very great difference with some men, in regard to their actions, whether or not there is such a power behind them. Some men are so constituted that they never will continuously depart themselves properly unless they are placed upon their good behavior.

Mr. FRIZELL. This Section 3 is one in the retention of which I take some degree of interest. It is a subject, Mr. Chairman, on which very good men would disagree, viewing it from different stand-points. I did suppose, until the reading of the Constitution of New York, by the gentleman from Ormsby, (Mr. Johnson,) that this was really an innovation, or, at least, something more than what is contained in the Constitutions of almost, if not all, of the States; but it appears, sir, that it is not new. We are perfectly well aware, Mr. President, that desperate diseases require desperate, or at least adequate remedies. It is well known that a physician may study a life-time to make up a theory for the treatment of some particular disease, and the discovery may, perhaps, be extended over a whole continent. But then, sir, the same physician may afterwards locate in some particular district where he meets with a form of that disease that is extremely virulent and dangerous in its nature, and after all his theorizing he then finds that he is compelled to change his tactics, and to abandon his theory of practice, which he had adopted after life-long study. Now I need not say to you, Mr. Chairman, and members of this Convention, that this disease which we seek to reach and control, or cure, the disease that has prevailed in this locality heretofore, and which I fear will continue to prevail in the future, is one that is dangerous and difficult of treatment. It is a disease, Mr. Chairman, which attacks the brain, the heart, and the stomach of men, and I almost fear, sir, that it contaminates the soul. And, sir, as an application to such a disease, I know of no better remedy than this Section 3. I hold that when we get good and upright judges on the bench, this section will operate as an incentive and inducement for such men to do their duty boldly and fearlessly. And on the other hand, it will hang like a sword suspended by a single hair over the heads of those men who would deviate from the path of duty, or do that which is evil and wrong. With those remarks, I leave the subject with the Convention, hoping that Section 3 will be retained.

Mr. CHAPIN. I desire to say only a word or two on this subject. I appreciate the objections which gentlemen have urged against this section, but our situation in this country, it appears to me, is a peculiar one, and altogether unlike that of the older States of the Union, where the judges may be men who have been known in the community from their youth up, and where people are able, therefore, to select their judges from among men who have been long known and tried. There they can select men to whom they dare to intrust their lives, their property, their honor—everything. We cannot, for a long time to come, anticipate such a state of affairs here, and therefore I am in favor of retaining this section, so that we may be able to reach those judges whom we may chance to select, in case they should be found unworthy or incompetent, because we shall be compelled to take men about whom we know very little, and in regard to whom we shall be very liable to be deceived. If we are deceived, I want a provision here, by means of which we can reach and remove them, and not be compelled to suffer ruinously, from year to year, in consequence of their malfeasance in office. Therefore I shall vote in favor of retaining the section.

Mr. DUNNE. I am very much surprised to see the great degree of unanimity which seems to prevail in the Convention on the question of retaining this section. I find myself differing apparently from the great majority of the Convention. Still, I cannot but believe that true policy would require the striking out of the section. We live here under a radical Democratic government, and the only conservative balance which we have in our whole scheme of government is the judiciary.

Mr. FRIZELL. Will the gentleman allow me to correct him, and to suggest that the only party which is radically democratic, is the Fremont party. [Laughter.]

Mr. DUNNE. If the gentleman considers it necessary for me to explain, I will say that I

am not a Fremont man. [Laughter.] I say that the only conservative balance we have in our scheme of government is the judiciary. That is all that is left to us, and if we strike that out we move forward in a headlong career of radical democracy. I am in favor of retaining that conservative balance in our government.

Now in regard to the proposition advanced by some of those gentlemen who are in favor of striking out this conservative balance, that an accusation against a judge does not necessarily affect his character in the least, but that he will come out of the ordeal purified and exalted by the trial—that a mere accusation as to the purity of his character and his honesty of purpose, although made openly and published by the press throughout the State, and canvassed in the legislative halls of the State, does not necessarily reflect upon the character of the person accused, but that if he comes unscathed out of the legislative halls he is exalted by the trial—I do not think that the experience of the world justifies such an assumption. On the contrary, I believe that men can never entertain the same feelings in regard to that person that they could before. In giving this power to the Legislature, then, we are placing this only conservative balance that is left us where it will be subjected to the caprice of popular clamor. Here in this Territory, and proposed State, we are differently situated in regard to our society from those other States, whose Constitutions have been quoted to us upon this point. They have in those States no gigantic monopolies like ours, one or two of which, and possibly one alone, may be the owner and director of perhaps a fifth part of the whole amount of property in the State. By the incorporation of this section we place it in the power of any one of the powerful mining companies existing amongst us to ruin forever any judge who shall dare to stand opposed to it, on any issue that may be raised in his Court. They may not be able to impeach him, or to secure the vote in the Legislature requisite for his removal under this provision, but they can nevertheless ruin him forever, irretrievably, by raising this clamor against him.

Now it has been stated that without a provision of this kind, a judge might bid defiance to the people, and to all the world. I think that assertion is not well founded. In the first place, we have the section providing for impeachment, and the judge is always subject to that, if he commits any act deserving of impeachment. We have also, in regard to this provision, the example before us of the Constitution of the United States. Now, sir, what would be the effect of retaining this section? I think the practical working of it would be such as to give us a poorer class of judges. The people are careless enough, at best, in the matter of the selection of their judges, but give them that section, and they would become more careless still. When some man comes before the people as a candidate for judge, who has attained a good degree of popularity, although his character is somewhat doubtful, if the question is raised as to his character, it will be said that that is not of much consequence—that under this provision it makes no particular difference—because if it should happen to turn out that his character is bad, it will be all right, for they can easily remove him. The tendency of the provision would therefore be to lower the standard of the judicial office.

In regard to the point made by my colleague, (Mr. Banks,) that in the last section we have already a provision made for the removal of any civil officer, I think it was well taken. I ask the attention of the Convention to the reading of these sections. Section 1 confers the power of impeachment, and Section 2 says that "the Governor, and other civil officers under this State Government, shall be liable to impeachment," etc. Now if the word "civil" does not include judicial officers, then judges are not liable to impeachment under that section; but if it does, they are liable to impeachment, and they are also liable to removal under this last section, which says that provision shall be made by law for the removal from office of "any civil officer," etc. Therefore, I say this last section reaches all that is reached by Section 3, and for the same reason that I would be in favor of striking out Section 3, I would be in favor of amending the last section by excepting judicial officers.

Mr. NOURSE. I would prefer that this section should be somewhat modified. In the first place, I would prefer that the Governor should have to act in the matter, and not the Legislature alone, dividing the responsibility among so many that no one man feels it. I would prefer that when a judge is to be removed, there shall be some individual responsibility, which shall be an additional check and safeguard against a wanton exercise of power. I would prefer, also, that the New York system should be adopted in that respect, rather than that of my native State of Maine, or that of Massachusetts. In Massachusetts a judge may be removed by the Governor upon the address of the Legislature; but there are very few Governors who would refuse to remove a judge upon such an address, even if he had any inclination that way. The Governor would be apt to say—"The Legislature advises me to do it, and I do only as I am advised." It would be a mere show of the exercise of his discretion, but the case would be very different if upon his own responsibility he had, in the first instance, to make the recommendation. But I only state these preferences to show more clearly why I vote for the section as it is. I think it is better to adopt it as it stands, than to have it left out entirely, and I do not expect, if it be adopted, that there will perhaps ever be an occasion for the exercise of this power; and, at all events, I am very sure that it will not be frequently exercised. But the bare fact that there is such

a power, that the judge who does not do his duty satisfactorily to the community at large is liable to removal, I feel certain, in my own mind, will tend to give us more care, more industry, more sense of responsibility, on the part of the judiciary.

I recognize very fully, and feel very strongly, the suggestion of the gentleman from Humboldt, (Mr. Dunne)—whose suggestions are always worth listening to—as to the importance of keeping our judiciary independent. The judiciary should be measurably independent, but, at the same time, I think the effect of this Section 3 is simply to prevent the judiciary from becoming too independent. I do not fear that a mining company, or any other interest, can any more readily or easily buy two-thirds of the Legislature, than it can buy one judge. I do not think that argument is entitled to much weight. For the purpose of having our judges feel their responsibility for the faithful and diligent performance of the duties of their office, and not to have merely a means of impeachment in case they should prove unfaithful, I think this Section 3 as it stood in the original article is a desirable one, although, as I have said, I think it could be improved by amendments requiring action, in the first instance, on the part of the Governor. And at the same time I would like to have this final section so amended as to read something like this:

"Provision shall be made by law for the removal from office of any civil officer, other than those above named," etc.

Mr. DUNNE. Allow me to make one suggestion. The point I wished to present was, not that the Legislature, by a two-thirds vote could secure the removal from office of a judge, but that men could, for their own ends, raise the question of the removal of a judge in the Legislature, and then, by means of the press, they could raise a clamor about his ears, and in that manner ruin his reputation forever.

Mr. NOURSE. If they can raise any more clamor about judges than has been raised during this last year, they will do pretty well.

Mr. DUNNE. Well, I think they do not need to raise more.

Mr. NOURSE. I confess that I cannot give so much weight to that matter as I can generally to the suggestions of the gentleman from Humboldt.

The question was taken on the amendment inserting Section 3, as contained in the printed article, and it was agreed to.

Mr. NOURSE. I now move to amend Section 4, the final section, by inserting after the word "officer" the words "other than those above named."

Mr. BANKS. I do not know what the term "above named" may include or imply. In Section 2 of the printed article, we have these words—"The Governor, and other civil officers under this State Government, shall be liable to impeachment," etc. Now the phrase "Governor, and other civil officers," it seems to me would include all the officers of the State, or, at least, all but officers of the militia.

Mr. JOHNSON. Section 3 provides for the impeachment of the Governor, and all other civil officers; whilst Section 3 provides for the removal of civil officers; and finally Section 4 comes in, and says:

"Provision shall be made by law for the removal from office of any civil officer, for malfeasance or nonfeasance in the performance of his duties."

This necessarily confers authority on the Legislature to provide for the removal of a certain class of officers, in case such removal shall be deemed essential to the public interest. But it will be observed that the section, if amended as proposed, can only apply to certain classes of officers. There are in this article several distinct classifications. First, it is provided in section 2, that "the Governor, and all other civil officers, shall be liable to impeachment," etc.—this includes all civil officers; then Section 3 provides for the removal by the Legislature of judicial officers; and finally this section comes in and supplies the deficiency, in regard to cases not provided for by the preceding sections. It appears to me that even without amendment Section 4 refers back to the preceding sections.

Mr. BANKS. Would it not put the matter beyond all doubt, if we amend the section so as to read:

"SEC. 4. Provision shall be made by law for the removal from office of any civil officer, other than the Governor and judicial officers, for malfeasance," etc.

Mr. NOURSE. I have an amendment here which I think will cover it. I will withdraw my amendment, and move instead, after the words "any civil officer," in Section 4, to insert the words "other than those hereinbefore specified." I do not suppose that we mean to give power to the Legislature to make a law providing for the removal of the Governor, or the judges.

Mr. JOHNSON. Section 2 says "the Governor, and other civil officers." Now a justice of the peace is a civil officer. I think the language originally employed by the gentleman from Washoe covers the case. The article makes three classifications: First—that the Governor and all other civil officers may be impeached; second—that the judges may be removed from office by the Legislature; and third—that all other civil officers may be removed by law.

Mr. DUNNE. And including the Governor, too, if they choose.

Mr. JOHNSON. No, sir; I think not.

Mr. NOURSE. Suppose we say "any county officer," instead of "any civil officer?" That is all that is intended, I suppose. I imagine that the Executive and the judges are designed to be covered by the preceding sections. Now if we say in this section "any county officer," would not that cover it all?

Mr. JOHNSON. What would you do with a justice of the peace? He is not a county officer.

The CHAIRMAN. If gentleman will agree upon something, the Chair will put the question.

Mr. JOHNSON. I do not want to be understood as advocating the giving of power in this section, by which the Governor or other State officers, could be arbitrarily removed. I regard it as important, so far as the Executive and State officers are concerned, that the article shall be left so that they can only be reached by impeachment, although it may be proper to provide that in some cases the judicial officers may be reached by removal from office, under certain restrictions.

Mr. BANES. I am willing to attribute my not understanding this matter to a very muddy brain, but I must confess that I do not understand it. I wish to ask the gentleman from Ormsby (Mr. Johnson) what he understands "the Governor and other civil officers" to include?

Mr. JOHNSON. As including all civil officers, from Governor to constable.

Mr. BANES. Now does the gentleman understand that that term, "the Governor and other civil officers," means the same thing as the phrase here employed in this final section, or Section 5, as it is numbered, where it says—"Provision shall be made by law for the removal from office of any civil officer?"

Mr. JOHNSON. I stated in my first remarks to the Convention on this subject, that I did not believe the last section was sufficiently definite and expressive of what we intend, and that it should be amended. The only question in my mind is, as to the words to be inserted. Suppose we use the words "county or township officer?"

The PRESIDENT *pro tem.* How would it do to say "State officer?"

Mr. JOHNSON. I cannot consent to include them. I do not want them to be subject to removal simply by operation of law.

Mr. DUNNE. I am astonished at the proposition advanced, as I understand by the gentleman from Ormsby, (Mr. Johnson,) that we should endeavor to give more stability to the offices of the Governor, Controller of State, Treasurer, and Attorney-General, than we do to the Supreme Court; that the tenure of office of a judge of the Supreme Court shall be of a slighter nature than that of a mere State Controller. That is the effect, if the gentleman has given the true construction of this article. By Section 2 we provide that the Legislature may remove a justice of the Supreme Court, without being able to establish any grounds of impeachment. They may do it, as was said in regard to a certain judge in California, simply "on general principles." The section reads thus:

"Provision shall be made by law for the removal from office of any civil officer, for malfeasance or nonfeasance in the performance of his duties."

Now the Legislature might enact a law that a majority vote shall be sufficient for the removal, under this section, of a judge; and as Section 2 provides who may be liable to impeachment, and includes judges in the term "civil officers," the Legislature might by law provide that when a judge could not be removed by impeachment, he might be removed by a majority vote. I think we are getting this thing rather mixed.

Mr. BANES. Now, sir, if the restriction proposed by the gentleman from Ormsby, (Mr. Johnson,) and which I understand is now being prepared by the gentleman from Washoe, (Mr. Nourse,) shall prevail, there will be a clear and well defined expression of the idea, which, as we all appear to understand, this section was intended to convey. It seems to be the sense of those who advocate a section of this kind, that its application shall be restricted to the officers of counties and townships. Now I remember very well the condition of things which once existed in the State of California, and which is liable to exist in any State having a large metropolis—as Virginia and Gold Hill, in Storey County, constitute the metropolis of this Territory, as New York City is the metropolis of the State of New York, and as San Francisco is the metropolis of California. As it has been in New York, and in California, so it may be in this Territory. There is always a spirit of antagonism existing between the grand metropolis of the State and the rest of the State. People living in the rural districts of the State of New York, look upon New York City as a sort of grand institution, of which, in one sense, they may feel proud, but against which they are always legislating, and always warring. The history of the police contest in New York will illustrate this fact, and the franchises and privileges granted and provided for by the Legislature, and the almost interminable controversies which have resulted from that kind of legislation, are also instances in point.

In California, also, we have always found the Legislature trying to do something against the interests of San Francisco, and I state what I know, when I say that ever since 1856, except, perhaps, during the last two sessions of the Legislature, if a power of this kind had existed in the State of California, every officer of the City of San Francisco would have been removed. The will of the Legislature has been antagonistic to the will of the people of that city, so far as the choosing of the city officers is concerned. Gerrymandering bills, as they are called, bills providing for new judicial districts, and for the reorganization of the police department, have been devised, for the purpose of defeating by legislation the will of the people of San Francisco, so far as their local officers are concerned. I do not wish to provide in our Constitution for a power in the Legislature, by which the will of the Legislature may be exercised unrestrictedly in such cases. I want to see such provisions that the local officers in every part of our proposed State shall be able to exercise independence; that the people in every county may enjoy that indepen-

dence which the spirit of our institutions contemplates. In this sense, I am eminently a "squatter sovereignty" man. I believe that the Legislature should have no power, such as is contemplated here, to say who shall and who shall not exercise the functions and prerogatives of local officers.

Mr. JOHNSON. The gentleman from Humboldt entirely misapprehends the proposition. This section does not give to the Legislature the power of removal. We propose only to confer on the Legislature power to pass a law, by which such officers may be removed. It is to be done by general statute, by which the authority will be delegated to the local authorities, or to the Courts. I think it is an assumption which the language of the section does not justify, to say that the Legislature may exercise the power of removal.

Mr. BANKS. I have not concluded, but I will give way to allow the gentleman from Ormsby to state his case, and then I will proceed.

Mr. JOHNSON. We all understand the inhibitory features which we have adopted. We have required, for the enactment of any law, the votes of a majority of all the members elected to each branch of the Legislature, and the approval of the Executive; or, if such approval is not obtained, then a vote of two-thirds of all the members elected to each branch is necessary, in order that a bill may become a law. I think that would be a pretty effectual guard and vindication of the gentleman's doctrine of "squatter sovereignty." Now the people, through their representatives, should be heard in vindication of those matters which they may regard as necessary or desirable to be enacted into laws, and we have already carefully provided against hasty, ill-considered legislation. I do not believe that any of the evils, which the gentleman from Humboldt suggests, can properly be anticipated from the adoption of this provision; but I do conceive that without it, evils may grow up, which we shall have no power to correct. There will be no authority by which those officers can be reached, save by means of impeachment. Now, according to the present programme, the Legislature is to meet every year, for the first two years, and thereafter biennially; but the tenure of office of those to which this section is designed to apply, will probably be only one or two years, and that period will, in many cases, expire before any possible corrective measures could be employed. What would be the consequence? Why, they may act as they will until their term expires, bidding defiance to the people who have elevated them to official positions. Now I want to lodge this power of removal somewhere. If the gentleman from Humboldt can devise a system or plan, which will be any better calculated to meet the case, I have no objection. If the gentleman proposes that we shall resolve ourselves into a Legislature, and pass a law declaring who shall be clothed with this power, and in what cases they shall exercise it, possibly I might even then agree with him, if the system were practically a more commendable one than is already proposed. But still, I must insist that in these minor matters, I do not think we can properly define all the particular features which should be adopted.

The other gentleman from Humboldt (Mr. Dunne) says, that by this article we make the State officers more permanent than we do the judiciary. Now the way in which I discriminate in that respect is this: the judges, on account of the important positions which they occupy, exercise a wider influence—a power which the combined elements of the executive department could not possibly possess. The judges, on account of their positions, hold in their hands, as it were, the lives and fortunes of individuals, and it is necessary, I conceive, that there should be implanted somewhere, an authority and controlling influence which shall compel a proper performance of duty. That is much more necessary, I hold, in regard to the judiciary than in respect to the State officers.

Now, sir, I would be willing to take a step in advance even of what the gentleman from Humboldt may propose in regard to the removal of State officers. The gentleman is opposed, I understand, to any exercise of this power. I know it is not practically presented in the article before us, and perhaps not legitimately before the Convention for discussion now; but I will say that in regard to the subordinate branches of the executive department, I am willing that the power should be lodged somewhere, possibly with the executive, to remove incumbents from office, or at least to suspend them, pending the investigation of any charges that may be made. I have known of instances in which the interests of the State would be greatly promoted by the exercise of such a power. But this matter does not properly arise here for discussion, and I understand the subject relating to the tenure of the State officers is only urged here as an objection against this judicial feature of the article. I do not think it is a fair mode of discussing that judicial feature. When it properly comes up, upon the presentation of proper amendments to that particular clause, the gentleman from Humboldt may possibly find me, and others, coöperating with him in regard to it.

But I do conceive, judging from numerous precedents that have been afforded us in the history of other States, that this provision in relation to the removal of judicial officers, is wise and judicious. I have had, since this discussion commenced, an opportunity to give only a limited examination, but I find that wherever this feature has been adopted in other States, they have gone considerably in advance of what we propose. The provision in the New York Constitution I have already adverted to, and I would also cite the gentleman from Humboldt to the amended Constitution of

Pennsylvania, especially in respect to its judicial features. In Massachusetts, the Governor, upon the recommendation of either a majority or two-thirds—a majority I think—of the Legislature, may remove any judicial officer. In Ohio they have gone quite as far, certainly, and I believe farther than we propose, in this respect. In the State of Indiana they have not laid down the particular mode of proceeding which we propose to adopt, but simply provide for removal by law.

Mr. DUNNE. If this concluding section is to stand, I would inquire what is the reason for retaining the provision in regard to the impeaching of judges?

Mr. JOHNSON. It is this: An offense which calls for impeachment is regarded as a crime of a more serious character than that which would simply demand removal. The judgment in a case of impeachment extends not only to removal, but also places a stigma upon the party, by reason of which he is debarred from ever holding any office of trust or profit in the State. Impeachment may go as far as that, but in the matter of removal there is no punishment beyond. The party is simply removed, but the people may, if they will, at any time thereafter, re-invest him with the emoluments and honors of the station from which he has been removed. That is the distinction. And because impeachment may entail a penalty of such extreme character, it has been found a most difficult matter to remove by impeachment any judicial or other officer, even in the most flagrant of cases.

But I was speaking of the precedents afforded by the action of other States on the subject of removal, and I had referred to the Constitutions of New York, Massachusetts, Pennsylvania, Ohio, and Indiana. In the present Constitution of the State of Indiana, there is not provided any specific mode of removal, but the power is lodged in the Legislature, to pass a law covering the case. The language of the section is this:

"All State, county, township, and town officers may be impeached or removed from office in such manner as may be prescribed by law."

This, it will be observed, is far in advance of anything we propose. Any and all officers may be removed from office, simply by force of a law to be enacted, and such law would not require the votes of two-thirds of the members elected to both branches of the Legislature. In the State of Illinois, too, they have gone quite as far as we propose. My inquiries have not extended further than the States I have named, but I have no doubt that if I had time to peruse the Constitutions of other States, especially of those which during the last fifteen years have adopted new Constitutions, or adopted amendments, I should find that provisions of a character similar to what we propose have been incorporated in the Constitutions of those States, or in most of them, at least.

We do not find so many precedents in the Constitutions of the older States, but the reason is, that the state of affairs at the time their Constitutions were framed, was of a very different character, I regret to say, from that which has existed in more recent years. In the earlier days of the Republic, judges were generally found to be men unlike those who in later times are unfortunately aspirants for judicial honors. In later times, under circumstances which we can well appreciate and understand, men have been found successful aspirants for those positions who have brought discredit and distrust upon the judicial ermine. The consequence has been, that whenever the States have come to form new Constitutions, or amend old ones, they have almost invariably adopted provisions on this subject unlike such as were supposed to be sufficient in the earlier periods of the history of our Government. For these reasons I think we are following in the line of safe precedents when we adopt a provision which confessedly does not go as far as the Constitutions of many of the States, and certainly is not in advance of any of the newer States.

Mr. BROSNAN. Inasmuch as this discussion has drawn out some ideas and considerations, which to me, at least, are new, I would like to make some inquiries of the gentleman from Ormsby. I should like to know from him—referring now particularly to the language used in Section 2—if his idea be not that all officers, of every description, including Justices of the Peace, are referred to by that section?

Mr. JOHNSON. I think so.

Mr. BROSNAN. I would inquire, then, if the gentleman wants Justices of the Peace to be subject to impeachment by the Legislature?

Mr. JOHNSON. I do not, and hence I want this last section adopted, whereby a law may be passed to effect a removal of such officers whenever necessary, without resorting to impeachment.

Mr. NOURSE. I propose to amend Section 2, when the present amendment shall be disposed of.

Mr. BROSNAN. If the gentleman will excuse me—I have not yet concluded—I would inquire of the gentleman from Ormsby if it would not be better to amend that section, and also Section 4, in this way: let Section 2 provide that—

"The Governor and other officers under this State Government, over the grade of county officers, shall be liable to impeachment," etc.

Mr. JOHNSON. I have no objection to that, or anything that will render specific the meaning of the section.

Mr. BROSNAN. And then let Section 4 be amended so as to read:

"Provision shall be made by law for the removal from office of any county or township officer, or Justice of the Peace, for malfeasance," etc.

Mr. JOHNSON. I think that would do, perhaps—

Mr. NOURSE. Will the gentleman from

Ormsby excuse me a moment, to show him an amendment which I propose to offer?

Mr. JOHNSON. (After examining the amendment.) I was proceeding to remark, in regard to the suggestion made by my friend from Storey, (Mr. Brosnan,) the only objection I see is that the terms he employs would not perhaps embrace the system of District Judges which we desire to adopt. They are to be elected in the several counties, and may not be considered as State officers. I think that objection is obviated by the amendment which the gentleman from Washoe (Mr. Nourse) has just now shown me.

Mr. BROSNAN. I had that in my mind when I drew this amendment, which I have suggested. I thought the District Judges would not be considered as State officers, and I have inserted the word "county" so as to provide for them.

Mr. JOHNSON. I think the amendment prepared by the gentleman from Washoe meets the case.

Mr. NOURSE. If the Convention will allow me, I propose, after this section is disposed of, to amend Section 2, so that it shall provide that all "State and judicial officers, except justices of the peace," may be impeached, and so on. I will make the motion after this question is disposed of.

The CHAIRMAN. The question now is on the motion of the gentleman from Washoe, (Mr. Nourse,) to amend Section 4 by inserting the words "other than those hereinbefore specified."

Mr. NOURSE. I will modify it, and say "previously," instead of "hereinbefore."

Mr. JOHNSON. Why not say "county and township?" Suppose you insert those words there?

Mr. NOURSE. Very well; I have no objection, if it is necessary. Will the Secretary read it again?

The SECRETARY. The amendment is to insert after the word "officer" the words "other than those in this article previously specified," so that if amended the section will read:

> SEC. 4. Provision shall be made by law for the removal from office of any civil officer, other than those in this article previously specified, for malfeasance or nonfeasance in the performance of his duties.

Mr. NOURSE. I think that is sufficient, as it now reads.

Mr. BANKS. So far as the merits of the question are concerned, it is not necessary to discuss it further; but if we are to insert any words here, I hope they will be such as we all understand the meaning of. It says now that provision shall be made for the removal of any officer "other than those in this article previously specified." Now what officers have been previously specified? "The Governor and other civil officers." In Section 2; and certainly the judiciary have been specified by name in Section 3, besides being included in the more comprehensive term of "civil officers." However, the gentleman from Washoe now says to me, privately, that he has an amendment which he intends to offer hereafter, which may render it plainer.

Mr. NOURSE. I will read it again, as the gentleman from Humboldt did not understand it. If this amendment is adopted, I propose then to offer an amendment to the second section, so that it will read:

> "The Governor, and other State and judicial officers, except justices of the peace, under this State Government, shall be liable to impeachment," etc.

Then we shall have the third section, providing for the removal of judicial officers by the two-thirds vote of the Legislature, and then Section 4 providing for the removal, by statute, of any officers "other than those in this article previously specified," for malfeasance, etc.

Mr. BROSNAN. The judicial article, as here printed, provides that the Legislature may create inferior courts. Now in case that is done in any city or town, there might require to be an exception made in this provision.

Mr. JOHNSON. Will not the use of the words "except justices of the peace" embrace such inferior Courts?

Mr. BROSNAN. That is a question, as to whether it would or not.

The CHAIRMAN. The question is on the amendment to Section 4, offered by the gentleman from Washoe.

The question was taken, and the amendment was agreed to.

The question was stated on the amendment proposed by Mr. Nourse to Section 2, to strike out in the first line the words "civil officers," and insert instead the words "State and judicial officers, except justices of the peace," so that the section would read:

> "The Governor, and other State and judicial officers, except justices of the peace, under this State Government, shall be liable to impeachment for misdemeanor or malfeasance in office," etc.

Mr. DUNNE. I do not see the propriety of excepting justices of the peace from the provision as to impeachment, and at the same time leaving the recorders in little towns within that provision.

Mr. NOURSE. Will the gentleman offer an amendment?

Mr. DUNNE. No, sir.

Mr. NOURSE. It only includes the State officers, such as the Governor, Attorney-General, Secretary of State, and so on, and leaves all the county officers out.

The question was taken on the amendment, and it was agreed to.

Mr. WETHERILL. It was not contemplated, I believe, that we should have County Courts, according to the judicial article; but here in Section 3, Judges of County Courts are spoken of. I should think it would be better that one or the other were stricken out.

Mr. JOHNSON. It is a part of the programme at present, I believe, that we shall have one District Court in each county, and

leave it for the Legislature to provide for County or other Courts, if deemed expedient. Hence, the word "county" should be retained.

Mr. BROSNAN. I call attention to another matter. It seems that these officers are rendered liable to impeachment "for misdemeanor or malfeasance in office." I should like to know whether they would not be liable to impeachment for felony?

Mr. NOURSE. It is provided that they may be removed by law "for malfeasance or nonfeasance."

Mr. BROSNAN. Malfeasance or nonfeasance in office is a misdemeanor. All offenses which are not punishable by imprisonment are misdemeanors; those that are punishable by imprisonment are felonies.

Mr. JOHNSON. I cannot just now think of a case where a person would be guilty of felony in office, although he may be guilty of a misdemeanor in office. I do not recollect of any place where such a term as "felony in office" is used.

Mr. BROSNAN. Suppose we say "felony, malfeasance, or nonfeasance in office?"

Mr. JOHNSON. Then if an officer is guilty of felony, you would subject him to impeachment?

Mr. BROSNAN. Yes, sir.

Mr. BANKS. It seems to me that would be using two words for one thing. If they have any special meaning, it occurs to me that the words "malfeasance and nonfeasance" cover the whole ground. Then we have a provision for mismanagement, or doing things wrong, and also for neglecting to do those things which are required to be done. It does appear to me that the word "misdemeanor" is not at all applicable, and might be left out without deducting in the slightest degree from the strength of the sentence.

The CHAIRMAN. There is no question before the committee. If gentlemen wish to debate they should offer some amendment, so as to make a question to speak to.

Mr. JOHNSON. With the permission of the committee, I wish to say, in reply to the suggestion of the gentleman from Humboldt, that those words to which he refers are used in different sentences, as he will observe. It seems to me, that as they are here used, those terms, "malfeasance," and "nonfeasance," greatly differ in their meaning. Malfeasance is the improper doing of acts with which a judicial officer may be intrusted, and that seems to be regarded as a higher offense—at least that is the sense in which I understand it here—and punishable with more severity than nonfeasance, or the failure to perform some duty with which the officer may be charged—the one being made ground for impeachment, and the other only cause for removal. In the one case, the wrong doing of an officer—corrupt practice, if you please—may be punished by impeachment; while in the other case, the failure to perform some duty with which the officer is charged, the punishment is removal only. If it is the opinion of gentlemen, however, that nonfeasance, or failure in the performance of duty, should be embraced or included within the terms of the second section of the article, that is, that it should be made a ground-work of impeachment as well as removal, I have no special objection.

Mr. BANKS. What is the object of using the word "misdemeanor?"

Mr. JOHNSON. I think it is more comprehensive and significant, implying more than the other word; and they certainly are not synonymous in this connection. I think there is an evident distinction. The provision is copied almost literally from other Constitutions, where the expression is found in the same connection.

The CHAIRMAN. If there are no further amendments, the Secretary will proceed to read the next article.

Mr. KENNEDY. I move that the committee rise and report this Article VII back to the Convention. I am opposed to the article as amended, but I want to get it into Convention, where we can vote on the amendments. I do not suppose we shall be deprived of that privilege.

The CHAIRMAN. I understand the motion is to rise and recommend the passage of the article.

Mr. BANKS. I shall vote against the recommendation.

The question was taken, and, upon a division, the motion to rise and report was agreed to—ayes, 14; noes, 4.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article VII, entitled Impeachment and Removal from Office, and had instructed him to report the same back to the Convention with certain amendments, in which the committee asked the concurrence of the Convention.

The PRESIDENT. The question is on adopting the report of the Committee of the Whole.

Mr. BANKS. I am in favor of adopting a part of the report, and opposed to the adoption of other parts; that is to say, I am in favor of the adoption of Sections 1 and 2, and opposed to the adoption of all that follows. I therefore hope that the question will be taken on each of the sections separately.

Mr. DUNNE. As it is now nearly time for the noon recess, I move that the time be extended ten minutes.

The question was taken, and the motion was agreed to.

The PRESIDENT. The article will be voted upon by sections, if there is no objection. The Secretary will read Section 1, as amended.

The Secretary read as follows:

SECTION 1. The Assembly shall have the sole power of impeaching, but a majority of all the members elected must concur in an impeachment. All impeach-

sents shall be tried by the Senate, and when sitting for that purpose, the Senators shall be upon oath or affirmation, to do justice according to law and evidence. The Chief Justice of the Supreme Court shall preside over the Senate, while sitting to try the Governor on impeachment. No person shall be convicted without the concurrence of two-thirds of the Senators elected.

The question was taken on the adoption of the section as amended, and it was agreed to.

Section 2 was read, as amended by the Committee of the Whole, as follows:

SECTION 2. The Governor and other State and Judicial officers, except Justices of the Peace, under this State Government, shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust under this State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

Mr. BANKS. Now, Mr. President, it will be observed that the amendment which was proposed to this section by the gentleman from Washoe, (Mr. Nourse,) and which has been adopted by the Committee of the Whole, is an essential, or at least a very important part of the general plan which the Committee of the Whole saw fit to agree upon in respect to impeachments and removals. I am opposed to that general plan, and therefore opposed to the adoption of this amendment, and to the adoption of any amendment to any portion of the article which provides for anything further in the way of impeachment than simply that which was originally provided for by Section 2 of this article. I do not care about taking up the time of the Convention now in regard to it, as it is time for our noon adjournment, and therefore I move that the Convention take a recess until two o'clock.

The question was taken, and on a division the motion was not agreed to—ayes, 10; noes, 11.

Mr. BANKS. Now let us see what we propose to do by this amendment. We propose, in the first place, that we will ignore the teachings of the experience and the wisdom of the grandest minds that have ever been called upon to consider the propositions involved in this article. We propose to place in the hands of the Legislature of this State a power greater than that which the people possess. Sir, I think we have nearly all come to the conclusion that there must be, or, at least, that there ought to be, stability in some department of our government. It has been the teaching of our earliest years—it has been the belief of all the great statesmen of our country, that the Executive, Judicial, and Legislative branches of our government should be distinct and separate. Now there is nothing more antagonistic to that teaching than the proposition which you here propose to incorporate into Article VIII of this Constitution. I think that the teachings of those great minds, and the lessons of experience of the past, are worthy of more consideration than has been given to this matter.

Let us inquire how in practice this thing will work. We are nearly or quite all united in the desire that the judiciary shall be independent—that the bench should be rendered wholly independent of the excitements of political elections—and in our neighboring State of California, amendments have been recently adopted by which that end has been at least partially secured. For one, I believe that there should be no election by the people of judicial officers, but that the judges should be appointed in some manner which will secure conservatism upon the bench. I am very sure, however, that no such view of the subject as that would be likely to be adopted by the people of this Territory. I think, on the contrary, that the general opinion is, that we should have elections of judicial officers, but at the same time that those officers should be surrounded by all the devices and arrangements which are calculated to secure the ascendency of conservative influences. Now what is the practical operation of this matter? Under the plan here proposed, not only your judicial officers, but all your State officers, would be practically under the control of the legislative power of this State, and the result of that would be that there would exist no real independence. There will be really no power, except in the legislative department of your government. Now I do not believe that legislators are free from the excitements which exist in the community. On the contrary, I do know, from past observation, and in some little degree from my own experience, that of all men they are the most likely to be influenced by the prevailing excitements in those communities, which they acknowledge as their constituencies.

I have not time, nor, if I had time, have I the desire to occupy it, to say all that might be said on this subject, for the hour of adjournment is near at hand; but I will say, that I hope no gentleman will cast his vote in favor of so radical a change as is now proposed, without first well considering the subject. By so doing, they will be departing from all the teachings of the statesmanship of the past, and violating nearly everything which we have been in the habit of regarding as most sacred. I believe if gentlemen will but look to the state of affairs which must almost inevitably exist in our community in the future, they will see that there are many evils to be apprehended from the adoption of this course of policy, more than could be pointed out even in the course of a two hours' speech. I hope that gentlemen will carefully consider these matters before they undertake to make so radical an innovation.

Mr. LOCKWOOD. I desire to say a word or two in reply to the gentleman from Humboldt. He starts out by saying that those who favor this proposition are about to ignore all the teachings of those who have gone before us. Now I am not willing that this vote should be taken, with such an assertion as that uncontradicted. There has been read here, I think in

the presence and within the hearing of the gentleman from Humboldt, by the advocates of this amendment, the provisions of the Constitutions of other States, showing that nearly, if not quite all of the States, which have within a recent period of time revised their Constitutions, have put into those Constitutions about such a provision as the one we propose to adopt, and that therefore we are not only not ignoring the wise teachings of past experience, but, on the contrary, in this matter we are taking lessons of wisdom from those who have gone before us.

Now, sir, I believe that a judge is a man. I believe, furthermore, that a great many judges are corruptible men. I also believe that there is not a Territory in this Union where the incentives to corruption are anything like as numerous or as strong as they are in this Territory. And I believe, sir, that we ought to adopt this simple and summary way of remedying the evils which may arise in consequence of these facts. When we find that we have a judge who is corrupt—when we learn that fact upon evidence which is uncontradicted, and which is satisfactory to a body of men as intelligent as is likely to be assembled to constitute the Legislature of this State—and I trust, and have confidence to believe, that no man will ever be convicted, unless upon evidence so plain and palpable as to leave the matter beyond a doubt—I say that under such circumstances, I believe the people ought to be promptly relieved from the sway and authority of such a judge—the greatest nuisance, and the most damnable curse that ever afflicted a people.

I am reminded that it requires a two-thirds vote to remove a judge upon impeachment. If that is not a sufficient safeguard against any possible act of injustice, what would gentlemen have? I consider, that when the thing has become so palpable that two-thirds of the Legislature, after a fair and impartial hearing, are convicted that a man is corrupt, it is time to apply the remedy. I ask if justice to those whom he has been elected to represent, upon the particular subjects with which his office is connected—if justice to those whose property, interest, prosperity, life, and everything else is at stake, does not demand that in such a case the remedy shall be promptly applied, and they be relieved from—I will not say a nuisance, but a curse—an actual curse, hanging like an incubus over their prosperity, and over their liberties and lives.

Mr. DUNNE. I only want to call the attention of members to this fact, that they are never going to make a perfect system—that it is not in the power of human nature to produce perfect works. And while gentlemen are endeavoring in this particular to improve and perfect the judiciary and judicial system, I apprehend that the action they propose in that direction would tend to a far greater extent to ruin the system in the other direction. In my judgment, this one amendment would in itself constitute the ruin of the whole judicial system.

Mr. FRIZELL. Disregarding any and all precedents in other States—and I hold that we have numbers of them, although we may admit that no stain of reproach ever rested upon the judicial ermine, perhaps, in the States of Pennsylvania, New York, Ohio, and Illinois—yet, I say, disregarding all these precedents, we do surely need to apply radical remedies in this State. Supposing that we had not a single precedent, yet I hold that in this State our situation and our wants are peculiar, and we need to make provision in our Constitution to correspond with our peculiar circumstances.

Mr. WARWICK. I rise to a point of order; that the hour of recess has arrived and passed.

The PRESIDENT. The point of order is well taken, and the Convention is at recess.

Accordingly, at ten minutes after twelve o'clock, the Convention took a recess until two o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock, P. M., and was called to order by the President.

IMPEACHMENT AND REMOVAL.

The PRESIDENT stated that the question pending was on the adoption of the amendment made in Committee of the Whole to the article entitled Impeachment and Removal from Office, Section 2 of that article being immediately under consideration.

[Mr. CROSMAN in the chair.]

The question was stated on the adoption of Section 2 as amended by the Committee of the Whole, and the section was read as amended, as follows:

SEC. 2. The Governor and other State and judicial officers, except Justices of the Peace, under this State Government, shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall not extend farther than removal from office and disqualification to hold any office of honor, profit, or trust under this State Government. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

Mr. BANKS. There were some things I intended to say, while I was on the floor before the recess, which I did not express on account of the obvious want of time, and I do not desire now to protract the debate unnecessarily. In conclusion of what I was then saying, I will state that this would be just the result, that at every election men who are running for the Legislature will be questioned, either privately or publicly, as to their views in regard to the judiciary. In other words, the Legislature will become a judicial as well as a legislative body; for men will be selected to be sent to the Legislature with reference to their views upon certain judicial decisions. Not merely questions of State policy, but questions

which ought to be determined alone by the courts after judicial investigation, will be involved in the political canvass. Inquiries will be made in regard to the standing of gentlemen upon the one-ledge theory, or some two-ledge theory, or some question of riparian rights or possessory rights, it may be, or, to use language which was employed on another occasion, gentlemen will be inquired of as to the meaning of "chattels real" or "real chattels," or something of that kind. Such will be the character of the questions involved every year in the elections of members of the Legislature, and I contend that they are not legitimate or proper, for the reason that by thus questioning the candidates, and voting for or against them with reference to their standing upon such issues, we shall be making the tribunal elected to enact the laws, also the tribunal by which the statutes and the Constitution are to be judicially construed and determined. If we adopt in our Constitution a provision of the nature proposed, I conceive that the most appropriate device for our State Seal would be a representation of Justice as a prominent figure, either sitting or standing, with a bandage over her eyes, but the bandage raised with one finger, and Justice peeping around at the Legislature. [Laughter.] That, it seems to me, would be the most appropriate device, for the plainest logical deductions, drawn from a knowledge of human nature, will lead to the inevitable conclusion that under such a system the Judges of our Supreme Court would be forced to defer to the wishes of the Legislature from year to year, and to the prevailing opinion of the community as it may be manifested from time to time, upon any particular question. There will be no such thing as judicial independence, but on the contrary there will be inaugurated a state of things, under our present circumstances, (and doubtless to continue for a long time to come,) but little removed from pure Red Republican Democracy—little less than anarchy. Every man having an end to attain will be likely to secure his own elevation, or that of some tool of his, to the Legislature, for the purpose of exercising a most dangerous power over the administration of justice. Men of strong, vigorous intellects will be sent to the Legislature, and, acting upon the prejudices excited by violent articles in the public press, they will propose resolutions expelling judges from the bench, and thus a system of terrorism will be established over our judiciary, controlling them by the power of threats, so that they cannot, if they would, act independently. I should deprecate the existence of any such condition of affairs. I know that gentlemen refer us to the bad state of things now existing in our Territory; I know that they tell us there are well-grounded opinions relative to the corruptibility of our courts, and I believe that is really a very great evil. I do not believe it is as great an evil, however, as it is said to be, or that the corruption is so wholesale as the language of gentlemen would imply, but I am willing to admit, for the sake of the argument, that there have been men on the Supreme Bench of this Territory who were not what they should be, either in point of morals or ability, for the discharge of the duties of that position. All that I am willing to concede; but nevertheless, I ask, shall we adopt as a permanent system, one involving so much of danger as does the proposition which is now before us for consideration, and which I greatly fear is supported, conscientiously and candidly I have no doubt, by a large majority of the members of this body.

Mr. WARWICK. I know, sir, that it is natural for men to shrink from an experiment the results of which are entirely problematical; but, after listening to the arguments, pro and con, I fail to perceive the dangers to which the gentleman from Humboldt alludes, and I am only astonished that he should have advanced the idea that we can with any degree of propriety place upon our great seal of State a standing figure of Justice, with one hand applied to a bandage over her eyes, signifying politically that justice is "all in my eye." [Laughter.]

Mr. BROSNAN. I hope the gentleman does not mean any personal reflection upon the Committee on State Seal. [Merriment.]

Mr. WARWICK. In order to show that I intended no allusion to the gentleman, I will remind him that my friend from Humboldt referred to a sitting figure, while I distinctly said that my figure was standing. That "lets the gentleman out."

Mr. JOHNSON. Does the gentleman mean to keep Justice standing all the time?

The PRESIDENT *pro tem.* Gentlemen will please preserve order, and not interrupt the gentleman from Lander.

Mr. WARWICK. Now, sir, I do not imagine that the attention of those we send to the Legislature will be exclusively drawn to the judiciary, or any more to that than it will be to other subjects. If that were the sole question to come under their consideration, then there might be a chance of the evils arising which have been foreshadowed by the gentleman from Humboldt. But there are other important matters for their consideration, and it is impossible that a Legislature could be selected simply and solely with regard to how members stand on any question connected with the judiciary. There may be far more grievous evils to redress than those under which the community is now suffering, from the clogging of the wheels of justice, and the want of that even balance of the scales, which every citizen, even the humblest, has a right to expect. I am in favor of adopting the amended section.

Mr. DELONG. I am not afraid to adopt anything, merely for the reason that it may have the character of novelty, although it may be an innovation upon all the precedents of the past. If I could see, from the suggestions of the friends of the measure, that any good was likely to result from it, I should not hesitate to give it my support, and it may be that I am

unfortunate in not having been present before to-day, so as to hear the views advanced by others in their advocacy of this proposition. But from the lights before me, and my experience in the past, I must say that I can foresee no good to result from such an innovation, while, on the other hand, I think that I can see that much of evil may ensue.

In the first place, it strikes me that the proposition is a blow aimed directly at a theory which lies at the very foundation of our government; I mean that theory which proposes to keep the three great departments of the government as independent of each other as it is possible to make them, and at the same time not allow either to be so completely independent that it may perpetrate wrong with impunity, with no power anywhere to remove, or in any manner to punish for the wrong-doing. It is that independence which, above all other things, attracts the admiration of all good citizens to behold—that independence which, in an hour of trial, at a period of time when the public mind seems to have run wild in its condemnation of some man, or some particular measure, perhaps, enables the judge occupying his official position, to stand as firm and unbending as a granite monument, throwing around the man who may be charged with crime, or the cause which may be prejudged by interest or by passion, all the protection which the law affords, and which justice accords to that man or that measure, never yielding in the least to the demands of popular clamor. Sir, I tell you, and I tell this Convention, that in this country, above all others, our judiciary needs to be left in a position of independence—free from the danger to arise from the clamor of temporary public excitement—so that they may discharge their duties fearlessly and impartially, with manly firmness, and liable only to impeachment by that deliberate and solemn mode which is pointed out in the Constitutions of other States.

There has been since the inauguration of the judiciary in this Territory, a series of the most damnable "raids," if I may be permitted to use that expression, concocted and carried on against the judiciary, and against every man who has occupied official judicial position in this Territory. Not a man has been so unfortunate as to occupy a seat upon the bench of Nevada Territory, but has been charged with corruption and wrong-doing, in one way or another. And why? There are a good many reasons which might be assigned. In the first place, there are many bad, unprincipled men here—men who have come here with the design of snatching a fortune by some means, and then leaving the Territory; and when such men have seen the coveted fortune within their immediate grasp, and then failed to obtain it, because they had no right to it, they have turned around, and out of revenge have endeavored to blast the character of the judges by whose decisions their designs have been thwarted. There are also other reasons for such a state of things. Good men are often divided in their interests and their opinions upon questions which the judiciary are called upon to settle; and it is almost impossible to convince a man of that class, in this Territory, who has lost a case in Court upon a question on which he, like other citizens, has formed and cherished the most decided opinions as to what are the real merits involved in the issue, that the judge who has decided against his views, is anything but corrupt and unworthy. Such men think that the whole world should view everything through their eyes, and they are not disposed to charity in regard to any man who may differ with them. Mining suits are commenced or conducted by learned counsel, surrounded all the time by men who are interested and engaged in preparing it, and during its progress of preparation, for six months or a year, they see only their own side of the case. Being wholly absorbed in that, they never get a glimpse of the other side. Go to one of them in such a case, and you will find him perfectly sanguine—not a doubt in the world that he is going to win, there appears to be such an abundance of proof, and such a clear case. Not looking at the case at all from the stand-point of the other side, they are perfectly surprised and astounded by a judgment against them, although the other side, with their view of the case, would perhaps have been equally surprised by a judgment the other way. What is the consequence? Why, that not one case in a hundred of this class is decided, but the party defeated comes right out and charges the judge with corruption. That is almost inevitably the case. Sir, I have come at last to regard the complaints of these parties as scarcely worthy an instant's attention, and much less would I allow them to shape our institutions, in a matter of such vast moment as the judicial system of the State.

I know that preparations are going on to array a party against certain decisions of the courts affecting the mining interests, and public meetings are to be called to ascertain how many are in favor of one theory or another; and the decisions of the judges, one way or another, are to be discussed in public meetings, as they are in the public prints. What is the object? It is simply to show the opposite side, and the judge who might possibly be inclined to decide in their favor, that if they do so they are in danger of public condemnation—that they cannot decide in a particular way without great danger, because the voice of the community is the other way. Now I do not charge these people who are engaged in getting up such public demonstrations with doing wrong, for it is the right of the people at all times to assemble together and discuss questions of public interest. I admit that such is their undoubted right, but I refer to this matter merely as an instance in point, as an illustration, to show the great danger of leaving the judiciary, above all other departments of the government, in a condition

to be swayed by every temporary popular excitement, instead of by their own convictions of right.

It is different with the Legislature, coming fresh from the people every two years. I know it has passed into a fashionable custom throughout the United States, and in every State in the Union, for the people to charge the Congress of the United States, and their several State Legislatures, with corruption and dishonesty. It is fashionable everywhere in this country to accuse the great mass of legislators of being corrupt. It has been my pleasure to be for four years a member of the Legislature of a sister State, and I know that it became so common to speak of passing "thieving bills," and of buying up the votes of members, that it was not regarded as an insult, even, when referred to in the presence of members of that legislative body. The thing became so customary that it ceased to attract attention, no matter how broadly the assertion might be made. I do not, for myself, believe there is generally good ground for such sweeping charges against legislative bodies, but although the fashion of making them is undoubtedly fraught with evil, yet they are charges which do not strike so deep, as when men come to attack the character of the judiciary, by charging the judges on the bench with corruption. The people are content as to the Legislature, because they know that if they pass laws that are wrong they have their remedy in reserve, by an appeal to the courts. They have a right to go to the courts, and, if error has been committed in the passage of any law, they can there find relief. But carry these popular denunciations a step further, and impress upon the people the idea that not only the Legislature, but the Judiciary also, are corrupt, and that moment you instil into the public mind a contempt for all law, and a strong tendency to anarchy—an end which bad men among us may desire, and perhaps hope to accomplish.

I tell you, sir, that we cannot be too careful to preserve the public respect for the judiciary, and hence it would be dangerous to attempt this proposed innovation, especially now and here, where the community is made up of men who have met together from every land, for the most part strangers to each other, not knowing who is to be trusted, where interests involving millions are often to be decided in a single case, and where consequently the passions of men are more inflamed, and hence the hazards of the State are greater. I maintain that our safety lies in preserving the public respect for the judiciary, and I hope to see the time when it will not do for public journals of any class, or in any quarter, to brait a rumor against a man holding judicial position, until the facts can be shown as the foundation of the rumor, until the specifications can be made public in connection with the charge, so that the man accused may know what he has to reply to. Why, sir, to-day the papers are teeming with charges against one whom I believe to be as high-minded and incorruptible as any man in our community, and as high above his accusers as the sun is above the earth; and yet, though you may answer and deny these charges, you call in vain upon the papers uttering them, and their correspondents, to specify the basis of a single charge, or to name any particular instance in which he has been corrupt or has done wrong, in order that it may be answered. The paper and the correspondent are silenced by such demands, but yet only a few days will elapse before the stream of invective breaks forth again from a new source, and again challenges reply; and so the thing goes on, until the man assailed, and his friends, are sick and tired of noticing it.

I hope that at this time, when we are suffering under so many evils, we shall not so far lose sight of our duty as to place the judiciary within the power of public opinion, so that men filling responsible and honorable judicial positions will be compelled to forget the cause of the culprit at the bar, or of the party who happens to be engaged in the defense of an unpopular issue, and yield to public clamor in order to save their judicial ermine. I hope we shall not place our judges in a position where they will be forced to mete out what the popular party calls for, right or wrong. It is because I am afraid this innovation would have that effect, that I think it is dangerous, and I cannot see that, on the other hand, there is any compensation by securing an uncertain good. I ask that the amendment may be defeated, believing, as I do, that it will be most mischievous in its consequences.

Mr. COLLINS. I look upon this amendment as anything but mischievous in its tendency, and to omit the insertion of something of this kind in our Constitution, would be, it seems to me, almost an innovation upon the general usages and customs of the several States in this Union. My friend, the gentleman from Storey, (Mr. DeLong,) says, as I understand him, that during his membership of the California Legislature, almost every bill that was passed, the charge of corruption was bruited about; but I ask the gentleman, how much of value was attached to charges and declarations of that kind? Why, sir, they have no value at all; and it is not to be presumed that this nervousness and irritability, to which he has referred, occasioned by judgments pronounced on the bench against certain parties, will have any influence over the public mind generally, and certainly not over a legislative body. I ask the gentleman what influence statements of that kind, under such circumstances, would have over a body like this? Just none at all; and I question whether, with all the declarations that have been made against members of the judiciary of this Territory, it would be possible to get two-thirds of any legislative body to pronounce against any one of them. It must be a very serious charge, indeed, and well sustained by

evidence, before impeachment would be given by the Legislature.

But this provision does not relate to impeachment; there is another section providing especially for that subject. Everybody knows how difficult it is to secure the impeachment of a judge, however guilty he may be, because that punishment is so extreme that men shudder at it; and if there is a possibility of raising a doubt in relation to the guilt of the party accused, he will never be removed by that process. This proposition contemplates other matters, and another remedy, and I contend that the people have some rights, as well as the judges on the bench. It contemplates, in the first place, the case, for example, of a man who may be in feeble health, and for that reason unable to discharge the duties of a judge. He may be unable to appreciate his own condition, and feel sanguine as to his speedy recovery, although all his friends know that his case is hopeless, and his remaining upon the bench is an injury to the community. And whenever a case of that kind is brought before the Legislature, without any charge being made which would affect the moral standing of the judge, or the man, it is provided that the Legislature, having in view solely the interest of the community, may have the power to remove him. It is no good reason why the wheels of justice should be blocked, that it is unpleasant to bring a man before the legislative tribunal, who is really unable to perform the duties of a judge, although he thinks he should still be allowed to enjoy the salary.

Again, a man may unfit himself for the judicial position by his own misconduct. His intemperate habits, his consorting with gamblers, perhaps, or his associations generally, independent of any judicial decisions, may be such as to create a strong prejudice against him, destroying the confidence of men, and rendering his judicial reputation of no value. I say it would be doing the State a very great injustice to allow such a man to hold on to his position, and let the public interests suffer without any remedy for the evil. I might go on, if necessary, and rehearse a dozen instances of similar character, where the circumstances would not be such as to warrant a proceeding by impeachment, and yet there ought to be some remedy, such as is proposed in this section, by which to relieve the people from the burden imposed upon them.

Mr. JOHNSON. I regret that the gentleman from Humboldt (Mr. Banks) has retired, because I desire to reply to some remarks which he has made. I regret also that the gentleman from Storey (Mr. DeLong) was not present this morning, when this subject was under discussion, as then he would have been advised of a fact of which I apprehend from the general tenor of his remarks he is not at present cognizant. When the gentleman speaks of innovation in connection with this matter, I do not entirely understand his meaning; whether he means to imply by the word "innovation" that we are proposing something here which is novel and untried, a feature which has not been adopted in the Constitutions of other States, or whether he means merely that it is proposed to do something which the committee did not contemplate; that is, reinstate something in the article which the committee deemed it proper to strike out, and thereby make a change in our action, or pursue a course different from what was contemplated by the committee.

Mr. DeLONG. It is partially both. I will state that so far as my acquaintance extends it is an innovation upon the general system pursued throughout the United States, although I may be in error in that. My remarks, however, referred to that point, and also to the fact that the proposition, after it had received the calm and careful deliberation of that large portion of this body constituting the Judiciary Committee, had failed to meet with the approval of that committee. It was partly on that ground that I spoke of it as an innovation.

Mr. JOHNSON. I apprehend that the gentleman meant mainly to refer to the action of the committee, because I am convinced that if he had investigated the subject himself, or had been present this morning when reference was made to so many States which have adopted substantially the same provision, he would not have regarded it as in any sense an innovation upon judicial systems, as found in the Constitutions of other States. And so far as the action of the committee is concerned, I am sure, because I fully appreciate the gentleman's sound judgment, that he did not mean to imply by his remarks that there would be any impropriety in reversing the action of the committee, or that the opinion of the committee should be in any manner binding upon the Convention, or even upon his own action in the Convention.

Mr. DeLONG. I will say this: that if I meet with a committee to deliberate on any subject, and unite with the committee in making a report upon it, and thereafter for any reason my views on that subject change, I would consider that I had just as much right, in Convention, to go right against the letter and spirit of such report as if I were not on the committee.

Mr. JOHNSON. I have no doubt of that. If any member acts on a committee, and unites in making a report, especially after the subject has received but limited investigation, he is not necessarily bound by the action of the committee. I would not conclude so myself, certainly, unless under very extraordinary circumstances.

Then, as to this other matter—the point made by the gentleman, as I understand him, that this proposition is a change or innovation upon the Constitutions of other States. In my remarks on the subject this morning, I stated that the time afforded, since the discussion arose, had not been sufficient to enable me to examine all the State Constitutions, with reference

to this particular provision, and I may furthermore say, that the time since morning has not sufficed for so thorough an examination as I would like to make, my attention not having been specially directed to the subject. But here I find some additional references, which may have some bearing in the way of precedents, so far as they are applicable, for the guidance of the Convention. I refer the gentleman from Storey now more particularly to the provision in the Constitution of the State of Maine, Article IX, Section 5.

"Every person holding any civil office under this State may be removed, by impeachment, for misdemeanor in office; and every person holding any office may be removed by the Governor, with the advice of the Council, on the address of both branches of the Legislature. But before such address shall pass either House, the causes of the removal shall be stated, and entered on the journal of the House in which it originated, and a copy thereof served on the person in office, that he may be admitted to a hearing in his defence."

In the Constitution of Massachusetts, to which I referred this morning, we find this provision in Chapter III, Article 1:

"The tenure that all commissioned officers shall by law have in their offices, shall be expressed in their respective commissions; all judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this Constitution. *Provided*, nevertheless, the Governor, with consent of the Council, may remove them upon the address of both Houses of the Legislature."

The Constitution of the State of New York, to which I adverted at some length this morning, contains provisions which I then read, and which are not dissimilar to what we here propose.

Mr. DeLONG. Do you refer to the revised Constitution of the State of New York?

Mr. JOHNSON. I think the Convention which framed it met in 1850.

Mr. COLLINS. In 1846.

Mr. JOHNSON. Well, at all events, it is the Constitution, the provisions of which are now in force in the State of New York, and I read from Section 11, of Article VI, of that Constitution:

"Justices of the Supreme Court, and Judges of the Court of Appeals, may be removed by concurrent resolution of both Houses of the Legislature, if two-thirds of all the members elected to the Assembly, and a majority of all the members elected to the Senate, concur therein."

Here, it is provided that the judges of the highest Courts known to the laws of that State, may be removed by a simple resolution of the Legislature. In the first two States to which I referred, Massachusetts and Maine, it is provided that removals may take place upon petitions of the Legislature, whilst in New York, a vote of two-thirds of the members of the Assembly, and a majority of the Senators, is sufficient to accomplish the purpose. Then the section proceeds:

"All judicial officers, except those mentioned in this section, and except Justices of the Peace, and Judges and Justices of inferior Courts, not of record, may be removed by the Senate on the recommendation of the Governor; but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the journals."

Such are the provisions we find contained in the Constitution of the State of New York.

Again, in the amendments to the Constitution of Pennsylvania, adopted in 1850, especially referring to and embracing the judicial system, I discover that after fixing the tenure of office of the several judges, of the superior as well as the inferior Courts, for specified terms of years, "if they shall so long behave themselves well," the following provision is added, as applicable to all the judges:

"All of whom shall be commissioned by the Governor; but for any reasonable cause, which shall not be sufficient grounds of impeachment, the Governor shall remove any of them on the address of two-thirds of each branch of the Legislature."

To this clause I especially refer the gentleman from Storey, (Mr. DeLong.)

In the Constitution of Ohio, Article IV, Section 17, a provision of this kind is found:

"Judges may be removed from office by concurrent resolution of both Houses of the General Assembly, if two-thirds of the members elected to each House concur therein; but no such removal shall be made, except upon complaint—the substance of which shall be entered on the journal—nor until the party charged shall have had notice thereof, and an opportunity to be heard."

The Constitution of Indiana was alluded to in the course of this morning's debate. Whilst there is no provision made in that Constitution with special reference to the impeachment or removal of judges, yet, in Section 8 of Article VI, a general power is given to the Legislature in these words:

"All State, county, township, and town officers may be impeached or removed from office, in such manner as may be prescribed by law."

Under that provision it would be competent for the Legislature to provide for the removal of a judge by a simple majority vote of the Legislature, or in such other mode as might be best calculated to subserve the occasion.

The provision in the Constitution of Illinois is couched in language very similar to that which we propose to embrace in this amendment. It is found in Section 12 of Article V.

"For any reasonable cause, to be entered on the journals of each house, which shall not be sufficient ground for impeachment, both Justices of the Supreme Court, and Judges of the Circuit Court, shall be removed from office on the vote of two-thirds of the members elected to each branch of the General Assembly: *provided*, always, that no member of either house of the General Assembly shall be eligible to fill the vacancy occasioned by such removal: *provided, also*, that no removal shall be made unless the Justice or Judge complained of shall have been served with a copy of the complaint against him, and shall have an opportunity of being heard in his defense."

Whilst this language varies slightly, yet in substance it is the same provision which we propose to embrace in our Constitution, by the re-

incorporation of Section 3, heretofore stricken out of this article on the recommendation of the Committee on the Judiciary.

As to the matter of impeachments, I find contained in the Constitution of Wisconsin a very essential variation from the generally received rule in regard to the number necessary to convict in a case of impeachment, requiring simply a majority instead of a two-thirds vote, as in most other States. The provision is in Section 1, of Article VII.

"The Court for the trial of impeachments shall be composed of the Senate. The House of Representatives shall have the power of impeaching all civil officers of this State for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment."

Then proceeding further, it provides that no judicial officer shall exercise the functions of his office after impeachment, until acquittal.

On the subject of removal the Wisconsin Constitution also contains substantially the same provision as we desire to adopt, Section 13 of Article VII reading as follows:

"Any Judge of the Supreme or Circuit Court may be removed from office by address of both houses of the Legislature, if two-thirds of all the members of each house concur therein, but no removal shall be made by virtue of this section unless the Judge complained of shall have been served with a copy of the charges against him, as the ground of address, and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the journals."

In the Constitution of Kansas I find, Article III, Section 15, this provision:

"Justices of the Supreme Court and Judges of the District Courts may be removed from office by resolution of both Houses, if two-thirds of the members of each House concur. But no such removal shall be made except upon complaint, the substance of which shall be entered upon the journal, nor until the party charged shall have had notice and opportunity to be heard."

Now, sir, I have not had an opportunity of examining the Constitutions of all the States of the Union, but my impression is that in nearly all of them there are provisions which do not vary materially from those which I have read; and by a comparison of this section which we propose to adopt with those contained in the Constitutions of other States relative to the same subject, it will be seen that we have at least gone quite as far in securing the rights of the party who may be accused as they have in other States; whereas, in some of the instances which I have cited, there is even a wider latitude given. In some States, upon a petition of members of both branches of the Legislature, the Governor has power, with the concurrence of his Council, to remove from office at once; in others, the like end is accomplished by a resolution passed by a two-thirds vote in each branch, and, in others, or in one at least, simply a majority of one branch of the Legislature is required, together with a two-thirds vote of the other branch, no State, I believe, going beyond that; and generally the restrictions are no greater than we propose to incorporate into the instrument which we are engaged in framing.

I have not heard in any instance of this system of removal operating injuriously, or that there has been any complaining in regard to it. On the contrary, I find that in many of the instances to which I have adverted the provision has been adopted as the result of experience acquired through the operation and working of similar provisions contained in the Constitutions of other States. In several of the later State Constitutions I remark that the provision seems to have been copied, or adopted in substance, at least, with but very slight change of phraseology, from amendatory provisions in the Constitutions of older States, and I believe the provision will be found embodied in some form in the Constitutions of nearly if not quite all of the States which have been created or organized in later years, or which have within a few years past had occasion to revise their fundamental laws; thus to my mind betokening the fact that such a provision is the result of experience—that it has been found to be a necessity to provide for the class of cases to which it refers—that it is the result of the observation and experience of the eminent men who have participated in the formation of the organic laws of those States; and for my own part I can foresee none of the evils to which my friend from Storey (Mr. DeLong) has alluded, as likely to arise from its adoption.

My friend from Humboldt (Mr. Banks) and his colleague (Mr. Deane) have both expressed their views on this matter. They find no particular objection to Section 1 of this article, which gives a majority of the Assembly power to impeach, with a view to removal, in that mode, then requiring a two-thirds vote of the Senate to render the impeachment effective. They have no complaint to make that thereby would be granted a dangerous power to the Legislature.

Mr. DeLONG. But in that case the Legislature has no power to act at all, unless the party accused is liable to impeachment.

Mr. JOHNSON. Very true; but the gentleman will perceive that there may be cases not of a kind to afford ground of impeachment—instances that cannot properly be made the subject matter of impeachment. The idea of an impeachment is, that it carries with it a punishment which may be greater than that of removal; although the punishment cannot extend beyond that of rendering the party incapable of holding any office of honor, profit, or trust, under the government of the State; yet, whilst it does extend to removal from office, it may at the same time embrace, as a part of the punishment, a subsequent inability to hold any office of honor, profit, or trust, under the State Government. Therefore, the very crime with which the party impeached is charged, and of which he is convicted, stands out in bold relief as a higher grade of offense, carrying with it

this higher degree of punishment; whereas, there may be causes which would not be of sufficient magnitude to justify one branch of the Legislature in impeaching, and the other in convicting the party offending, but at the same time would be sufficient to justify his removal from office, carrying with such removal no additional punishment.

Now, sir, I have heard no complaint from these gentlemen to whom I have referred, or others who are opposed to Section 3, with reference to the operation of Section 1, by which, a simple majority of all the members elected to one branch, is sufficient for an impeachment, requiring, however, a two-thirds vote of the other branch to render such judgment effective, or to convict the party impeached; whilst in this other, the third section, wherein it is proposed that removal shall be secured by a less tortuous course than by impeachment, we go still further, and require the concurrence of two-thirds of the members elected to each branch. Now I cannot conceive what should constitute, in a greater degree, the palladium and safeguard of our rights, than this conservative provision; yet, in the one clause, where a majority of one branch, and two-thirds of the other, is sufficient for removal, gentlemen see nothing objectionable, while in the other, which requires two-thirds of each branch for removal merely, they foresee great evils. Sir, I submit to the good sense of the Convention, which is the more secure, and which is likely to attain the best results, without doing any injury or injustice to the party accused, the provision for impeachment, to which gentlemen do not object, or the feature which we propose to adopt providing for removals from office?

Mr. DeLONG. Is not that just the point of the whole thing? Is not the point this: that men would be very reluctant to find a judge guilty under articles of impeachment, on account of the severity of the punishment; whereas, if they were clothed with power to remove simply, without imposing any severe penalty, they might exercise that power of removal in such a manner that evil consequences would be likely to arise? Would not the Legislature prefer, in every case, to remove a man in that manner, rather than resort to impeachment?

Mr. JOHNSON. I apprehend that very few cases of such a kind would arise, where there would be any possibility of obtaining a two-thirds vote. It could only happen in instances where it would be quite obvious that the public interests would be subserved, because it would require a most flagrant case of abuse, or of neglect of duty in office, to secure the votes of two-thirds of each branch in favor of removal. The other gentleman from Storey (Mr. Collins) has cited an illustration, in which it would undoubtedly be proper to remove a judge without resorting to impeachment, where there is no positive accusation of improper practice—and in repeating it, I am only restating what has already been well said on this branch of the subject. He suggests a case of this kind, where the health of the judge is such that he is incapable of rendering due service, although he may be unwilling to resign, because he naturally clings to the hope of recovery, and yet the public interests are suffering. In such a case there is no relief or remedy provided, without some provision of this character, for we all agree that there would not then exist sufficient ground of impeachment. Must the public interests in such a case continue to suffer, and no possible means be afforded to remedy the evil? The judge could hold his office and receive the salary, and we would have no relief, unless we provide for some supervisory power, with such constitutional authority as will enable us, under proper restrictions, to remove a judge. Where there is an utter failure to perform judicial functions, it is equally as injurious to the interests of the public, as if the judge were utterly corrupt.

I might proceed to an unlimited extent, perhaps, if it were necessary, to enumerate cases where there would be proper ground for removal, although falling far short of being proper ground for impeachment, and where, beyond all question, the public interests would be subserved by removal; and I apprehend that that is the reason why in other States the same rule has been adopted, which we propose to copy, requiring a larger number of votes to remove by resolution than is necessary to impeach.

My friend from Humboldt, (Mr. Banks,) in his remarks upon this subject, evidently intended to resort to sarcasm, although I confess that I failed to see the point. And I must say I regret, that on this occasion—I believe for the first time in this Convention—he should have seen fit to forsake the line of legitimate argument. I do not see the point of his sarcasm, or its applicability to this question.

I really cannot discover that any injury is likely to result from this proposition, especially when we are only following in the beaten track pursued by the wise men of other States—those who have themselves, in turn, merely followed in the footsteps of other learned men, engaged in framing the Constitutions of States in the early history of our country. If those men found sufficient cause from their own experience and judgment, to warrant them in adopting this so-called "innovation," I do not suppose we can be considered as arrogating to ourselves extraordinary wisdom, if, conceding to that knowledge and experience which induced others to forsake the beaten track, we make this "innovation." I think we shall only be acting wisely by incorporating into our Constitution a provision which the experience of mankind, in our own country, at all events, has found to be necessary.

I confess that I have not that profound and reverential regard which some profess for the men who assembled in Conventions in the early days of the Republic, when the Government was

yet but an experiment. Some argue that it is an experiment still, and is at this time being put to the severest test. Be that as it may, I am not, I say, one of those who look with such exalted veneration upon the men who framed our institutions in the days of our infancy, and yet can see nothing worthy of imitation in the labors of those who succeeded them. I think we will do well to observe somewhat the labors of those who have had an opportunity to improve upon what their predecessors have enacted. We have abundant illustration of the wisdom of that course in the constitutional provisions which, as we read, were adopted in recent years by such States as the great State of New York, famed for the wisdom and ability of its statesmen, who assembled in the Convention of 1845; Massachusetts, Maine, Illinois, Kansas, and other western States which have come into the Union within the present generation. I think we are judging wisely when we avail ourselves of their experience in years past, and incorporate into our fundamental law, from the provisions which they in their wisdom and judgment have thought it expedient to adopt, such features as are adapted to our condition. I can foresee no injurious consequences to affect us, which were not just as likely to result by the adoption of the same provisions in those States. For these reasons, as well as others, which I might advance if time could be afforded, I trust the several provisions, as they are here presented, will be adopted and retained, at least in their essential features. ["Question, question!"]

The PRESIDENT *pro tem.* stated the question to be first on the pending amendment to Section 2, to strike out the word "civil," and insert instead the words "State and judicial;" and also to insert after "officers," the words "except Justices of the Peace."

The SECRETARY read the section as it would stand with the amendments, as follows:

SEC. 2. The Governor and other State and judicial officers, except Justices of the Peace, under this State Government, shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust, under the State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment according to law.

Mr. DeLONG and others demanded the yeas and nays on the amendment.

The question was taken by yeas and nays, and the vote was—yeas, 14; nays, 10—as follows:

Yeas—Messrs. Belden, Brady, Folsom, Frizell, Gibson, Hawley, Lockwood, Murdock, Nourse, Sturtevant, Tagliabue, Warwick, Wetherill, and Mr. President—14.

Nays—Messrs. Banks, Broman, Chapin, Collins, DeLong, Dunne, Hovey, Kennedy, Mason, and Proctor—10.

So the amendment was agreed to.

During the voting—

Mr. McCLINTON. I would like to be excused from voting, for the reason that I have not heard the discussion on this matter, and am not well posted.

No objection being made, Mr. McClinton was excused.

The result of the vote having been announced, as above stated—

The PRESIDENT *pro tem.* said the question next was on the adoption of Section 2, as amended.

The question was taken, and the section was adopted.

The PRESIDENT *pro tem.* stated the question next on the amendment to reinstate Section 3, heretofore stricken out on the recommendation of the Judiciary Committee.

The question was taken by yeas and nays, and the vote was—yeas, 17; nays, 9—as follows:

Yeas—Messrs. Belden, Brady, Chapin, Collins, Crosman, Folsom, Frizell, Gibson, Hawley, Lockwood, Murdock, Nourse, Sturtevant, Tagliabue, Warwick, Wetherill, and Mr. President—17.

Nays—Messrs. Banks, Broman, DeLong, Dunne, Hovey, Kennedy, Mason, McClinton, and Proctor—9.

So the amendment was agreed to.

The PRESIDENT *pro tem.* said the next question was upon the amendment to Section 4 offered by Mr. Nourse, to insert after "civil officer," the words "other than those in this article previously specified," so that the section would read:

"SECTION 4. Provision shall be made by law for the removal from office of any civil officer, other than those in this article previously specified, for malfeasance or nonfeasance in the performance of his duties."

The question was taken by yeas and nays on the adoption of the amendment, and the vote was—yeas, 15; nays, 11—as follows:

Yeas—Messrs. Belden, Brady, Crosman, Folsom, Frizell, Gibson, Hawley, Lockwood, Murdock, Nourse, Sturtevant, Tagliabue, Warwick, Wetherill, and Mr. President—15.

Nays—Messrs. Banks, Broman, Chapin, Collins, DeLong, Dunne, Hovey, Kennedy, Mason, McClinton, and Proctor—11.

So the amendment was adopted.

The PRESIDENT *pro tem.* The question now is on the adoption of Article VII as amended, and ordering it to be engrossed for a third reading.

Mr. BANKS. As it is a short article, and important amendments have been adopted, I ask for the reading of the entire article as now amended. Then we can all vote understandingly.

The SECRETARY read the article, as follows:

ARTICLE VII.

IMPEACHMENT AND REMOVAL FROM OFFICE.

SECTION 1. The Assembly shall have the sole power of impeaching, but a majority of all the members elected must concur in an impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be upon oath or affirmation, to do justice according to law and evidence. The Chief Justice of the Supreme Court shall preside over the Senate while sitting to try the Governor upon impeachment. No person shall be convicted without the concurrence of two-thirds of the Senators elected.

SEC. 3. The Governor and other State and judicial officers, except Justices of the Peace, under this State Government, shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust under this State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

SEC. 3. For any reasonable cause, to be entered on the journals of each House, which may or may not be sufficient grounds for impeachment, the Chief Justice and Associate Justices of the Supreme Court and Judges of the District and County Courts shall be removed from office on the vote of two-thirds of the members elected to each branch of the Legislature, and the Justice or Judge complained of shall be served with a copy of the complaint against him, and shall have an opportunity of being heard in person, or by counsel, in his defense; *provided*, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

SEC. 4. Provision shall be made by law for the removal from office of any civil officer, other than those in this article previously specified, for malfeasance or nonfeasance in the performance of his duties.

The question was taken by yeas and nays, and the vote was—yeas, 17; nays, 9—as follows:

Yeas—Messrs. Belden, Brady, Chapin, Collins, Crosman, Frisell, Folsom, Gibson, Hawley, Lockwood, Murdock, Nourse, Sturtevant, Tagliabue, Warwick, Wetherill, and Mr. President—17.

Nays—Messrs. Banks, Brosnan, DeLong, Dunne, Hovey, Kennedy, Mason, McClinton, and Proctor—9.

So the article was ordered to be engrossed for a third reading.

EDUCATION.

Mr. COLLINS, from the Committee on Education, submitted the following report:

Mr. President: Your Standing Committee on Education, to which was referred Article XII, entitled Education, beg leave to report, for the adoption of the Convention, the following article:

ARTICLE XII.

EDUCATION.

SECTION 1. The State owes the children thereof tuitional facilities for a substantial education, and is entitled to exact attendance therefrom in return upon such educational advantages as it may provide. The Legislature shall therefore encourage by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction, whose term of office shall be two years from the —— day of January, 1866, and until the election and the qualification of his successor, and whose duties shall be prescribed by law.

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

SEC. 3. All lands, including the 500,000 acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841; the sixteenth and thirty-second sections in every township, donated for the benefit of public schools, set forth in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2, 1862, for each Senator and Representative in Congress; and all lands and parcels of lands that have been or may hereafter be granted or appropriated by the United States to this State; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land-warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds or the bonds of this State; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and provided further*, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

SEC. 4. The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanic arts, and mining, which shall be free to all white pupils possessing such qualifications as may be prescribed by the Board of Regents.

SEC. 5. The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may see fit; and all professors in said University, or teachers in said Common Schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article XVI of this Constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section, shall be entitled to receive any portion of the public moneys set apart for school purposes.

SEC. 6. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said university and common schools; *provided*, that at the end of ten years they may reduce said tax to one quarter of one mill on each dollar of taxable property.

SEC. 7. The Governor, Secretary of State, and the Superintendent of Public Instruction, shall, for the first four years, and until their successors are elected and qualified, be a Board of Regents to control and manage the affairs of the University, and the funds of the same, under such regulations as may be provided by law; but the Legislature shall, at the expiration of that time, provide for the election of a Board of Regents, and define their duties.

SEC. 8. The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said mining department, in such manner as to make it most effective and useful. *Provided*, that all the proceeds of the public lands donated by Act of Congress, approved July 2, A. D. 1862, for a college for the benefit of agriculture and mechanic arts, shall be invested by the Board of Regents in a separate fund to be appropriated exclusively for the benefit of the two first-named departments in the University, as set forth in Section 4, above. And the Legislature shall provide that, if through neglect or any other contingency, any portion of the fund so set apart shall be lost or misappropriated, the State of Nevada shall replace such amount so lost in said fund, so that the interest and principal of said fund shall remain forever undiminished.

All of which is respectfully submitted.

JOHN A. COLLINS, Chairman.

Mr. DUNNE. I move that the article reported be taken up and considered now.

Mr. DELONG. I would prefer to see it printed first.

Mr. CHAPIN. Could it not be published in the Virginia papers of to-morrow morning?

Mr. DELONG. It can be printed here, I understand. It is too late to send it to Virginia, for publication to-morrow morning. The attention of the Convention has been turned with a very jealous eye towards matters of legislation, and I am apprehensive that if we consider the article now, we might adopt or incorporate in it some provisions which would not meet with our approval, if we had it before us in print. This matter of religious and sectarian influence in the public schools, is, of all things, most calculated to arouse suspicions and jealousies in the public mind, and if the enemies of the Constitution can see anything in our action on that subject to carp at, they will be sure to make the greatest possible amount of capital out of it.

Mr. COLLINS. I would ask if this article cannot be taken up just as well now, the sections being read carefully by the Secretary, one by one, discussed, and amended if necessary, as we come to them? It seems to me, if gentlemen will be attentive, it may be done—and I will state that one feature which has been regarded as obnoxious, has been removed by the committee.

Mr. DELONG. How is it in regard to the positive requirement to send all children to school so much time in each year?

Mr. COLLINS. The committee has removed that provision.

Mr. DELONG. I will withdraw my opposition.

The question was taken on Mr. Dunne's motion to consider the article at the present time, and it was agreed to.

Mr. HAWLEY. I move that the Convention resolve itself into Committee of the Whole—the President *pro tem.* remaining in the chair—for the consideration of this article.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE—EDUCATION.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. CROSMAN in the chair,) and took up Article XII, entitled Education.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

The SECRETARY read Section 1, as follows:

SECTION 1. The State owes the children thereof the rudimental facilities for a substantial education, and is entitled to exact attendance therefrom, in return, upon such educational advantages as it may provide. The Legislature shall therefore encourage by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction, whose term of office shall be two years from the —— day of January, 1863, and until the election and the qualification of his successor, and whose duties shall be prescribed by law.

Mr. JOHNSON. I wish to inquire of the Chairman of the Judiciary Committee—I have not yet examined his report, and I admit that the fault is my own—whether it is contemplated to have a separate judicial election?

Mr. BROSNAN. There is no special election contemplated to be held for judicial officers; they are to be elected at the general election, at the same time as other officers.

Mr. JOHNSON. I made the inquiry with a view to proposing an amendment, if necessary; because I observe that the section as read provides for the election of Superintendent of Public Instruction at the general election.

Mr. DUNNE. I do not know that I understand altogether this enunciation of a doctrine in the first section. If I understand it correctly—and I will inquire of the chairman of the committee whether I am right or not—the doctrine enunciated is substantially this: that the State has a right to establish educational institutions, including therein moral instruction, and has a right to insist upon the attendance and reception of such moral instruction as the State may establish, or provide for in such institutions, on the part of all the children of the State.

Mr. COLLINS. That is, in the general sense of morality. It was the view of the chairman, and I think the committee generally agreed with him on that point, that the State may properly encourage the practice of morality, in contradistinction to sectarian doctrines. For instance, if a child insist on the practice of using profane language, I presume it should be made the duty of the School Superintendent, the teacher, or the Board of Education, to insist that he shall either refrain from such practice, or be expelled. There must be power somewhere to exact conformity to the general ideas of morality entertained by civilized communities.

The CHAIRMAN. The question is on the adoption of Section 1.

COMPULSORY ATTENDANCE ON SCHOOLS.

Mr. BROSNAN. For my own information, in order that I may be able to vote intelligibly, I will ask that Section 2 of this article be read.

The SECRETARY read Section 2, as follows:

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Mr. HAWLEY. I wish to call the especial attention of the gentleman from Storey to that provision. I wish also to call the attention of the Convention to the clause in this section, in

the old Constitution, which has been stricken out, reading as follows:

"The Legislature shall, within two years, pass such laws as shall make it compulsory with parents and guardians that all white children under their charge, between the ages of six and fourteen years, shall receive educational instruction for at least three months in each year, unless physically or mentally incapacitated."

That clause has been stricken out by the committee, and in lieu thereof the language of the section just read is proposed, providing that the Legislature may pass such laws as will best tend to secure a general attendance of children, in each of the school districts, on the public schools.

Mr. DeLONG. I thought from the first reading the language was, "to require attendance."

Mr. HAWLEY. It is, "tend to secure a general attendance."

Mr. BROSNAN. I only desired to have the section read in order to be able to vote intelligently on the preceding section.

Mr. HAWLEY. I will suggest to the chairman whether it would not be better to strike out the first sentence of Section 1, which seems to be merely in the nature of a preamble. Will the Secretary read it?

The SECRETARY read, as follows:

"The State owes the children thereof tuitional facilities for a substantial education, and is entitled to exact attendance therefrom, in return, upon such educational advantages as it may provide."

Mr. HAWLEY. I know that the provision of the former Constitution, making it compulsory on parents to send their children to school, met with a great deal of opposition. And for myself I certainly consider it entirely at variance with the spirit of our institutions. Now inasmuch as the language of that portion of the section seems to assert the same doctrine, and inasmuch as it is in fact at variance with the provision contained in the second section, as reported, with all respect to the committee I will move to amend by striking out that clause, and also the word "therefore" in the succeeding clause, so that the section will commence—"The Legislature shall encourage by all suitable means," etc.

Mr. COLLINS. The chairman of the committee certainly has no objection to striking out that language, although, in his opinion, it only expresses the true doctrine.

Mr. DUNNE. Although I shall be in favor of striking out that preamble, yet it will not be for the reason which has been assigned, of discarding the idea of exacting the attendance of children on the schools. I believe that should be done, and I believe the provision should be substantially the same as in the former Constitution, but with some amendments, which are obviously necessary. In order to reach that end, I will make a motion that we pass over the section for the present.

Mr. COLLINS. I will state the reason for the insertion of that preamble. In the first place, let me suggest to the Convention that it only declares the right of the Legislature to exact attendance upon school—some school. It does not say that children shall be compelled to attend the public school, but that the State has the right to exact attendance upon such educational advantages and facilities as may be provided. The Constitution framed last year, which forms the basis of our action, declared that all children should be required to attend school at least three months in each year, but that provision has been removed, and we propose instead to give the Legislature permission to make laws providing for and encouraging a general attendance at school. It seems to me that if the Legislature should have that right, then this preamble is correct, and if not, then the preamble has no business here. I am not tenacious about it, myself, however, though I really think there should be some provision by which the children of the State, growing up to be men and women, should have the privilege secured to them of attending school—that they should even be required to attend school somewhere. We have no right, and we cannot afford to allow children to grow up in ignorance. The public is interested in that matter, and it is one of too great importance to be neglected. Even if parents are too parsimonious to send their children to school, or for other reasons are indisposed to give them the educational advantages which the State has been at great expense to offer, I do not think the public can afford it. My opinion is, therefore, that it is the duty of the State to furnish the children the means of education, and then, as a corollary, if it is the duty of the State to furnish tuitional facilities, it is the duty of the children to attend upon them. There are many children who are daily squandering their time, and what is far worse, contracting habits which will ultimate in crime in some form, and if we shall adopt some provision by which the authorities can exact their attendance upon the schools, they may be saved from an evil destiny, and the State will certainly be the better for it.

The question was taken on the amendment offered by Mr. Hawley, and it was agreed to.

Mr. CHAPIN. The striking out of the word "therefore," follows, as a matter of course, I suppose?

The CHAIRMAN. It will be considered as a part of the amendment adopted.

TERM OF SUPERINTENDENT.

Mr. BROSNAN. I move to further amend the section by filling the blank in relation to the term of the office of the Superintendent of Public Instruction with the word "first," so as to read, "whose term of office shall be two years from the *first* day of January, 1865," etc.

Mr. JOHNSON. Perhaps it would be better to make it read the first Monday of January. Then it will correspond with the terms of the other officers of the Executive Department of the Government.

Mr. BROSNAN. It will be necessary to use the words "commencing on."

Mr. JOHNSON. No; not "commencing on." The terms of the other officers commence on Tuesday; if you say "from the first Monday," the term will commence on Tuesday, like other officers.

Mr. BROSNAN. Very well; then let it read "from the first Monday in January."

The question was taken on the amendment as modified, and it was adopted.

The question was taken on the adoption of Section 1 as amended, and it was adopted.

SECTARIAN INSTRUCTION.

The SECRETARY read Section 2, as follows:

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Mr. WARWICK. Will the Chairman of the committee explain a little, as to what is meant here by "sectarian?" It says that any school district "which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund," etc. Does that mean that they have no right to maintain Catholic schools, for example?

Mr. COLLINS. This provision has reference only to public schools, organized under the general laws of the State. It is not to be supposed that the laws enacted under it will stand in the way of, or prevent any Catholic school from being organized or carried on; but the provision prevents the introduction of sectarianism into the public schools.

Mr. WARWICK. That is entirely proper, but it seems to me that it might better be worded a little differently. It says, "which shall allow instruction of a sectarian character *therein*"—not in the school, but in the district. I do not suppose that is the intention.

Mr. COLLINS. You will find that it has reference only to public schools, and to the appropriation of the public funds. If they permit sectarian instruction, they are deprived of the use of the public funds, so that it has direct reference to the public schools, and clearly cannot refer to anything else.

Mr. WARWICK. I would like to examine that a little more carefully.

Mr. McCLINTON. I think all the objection can be easily obviated, and leave the section substantially as it is, by making a very slight change. Suppose we say, "in the public schools of said district."

Mr. WARWICK. That is the idea, exactly. It seems to me, as it now reads—and the gentleman will correct me if I am wrong—that it is not in the school, but in the school district that shall establish or allow instruction of a sectarian character, that this penalty is to be applied. It says:

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived," etc.

The word "district" evidently governs the sentence, and that is where the change ought to be made, so that the prohibition of sectarian instruction may apply, not to the districts, but to the schools.

Mr. McCLINTON. I will make a motion to amend the section by striking out the word "therein," and inserting instead the words, "in the public schools of said district."

Mr. HAWLEY. I wish to inquire of the gentleman from Lander whether he imagines that the language of the section as it now stands would make any difference in regard to payments of the school-money, under the law, in a case, for instance, where, under the laws of the State, parties may have organized a Catholic school, entirely separate and distinct from the public schools? Does the gentleman think that the mere fact of the existence of that Catholic school in the district could have any possible influence in preventing the payment of the school-money under the law? In other words, I ask him whether he believes that any school district could be held responsible for the action of private parties, in organizing sectarian schools within such district?

Mr. WARWICK. No, sir; that would be manifestly unjust, and that is the reason why I want this amendment. I do not want the school district to lose on account of the establishment of a Catholic school, a Methodist, a Baptist, or any other school, and therefore I say the language should be such as will not be open to the slightest imputation of that construction.

Mr. HAWLEY. Very well; I will consent to the amendment, so far as I am concerned.

Mr. COLLINS. I wish to call the attention of the Convention one moment to the language of the section as it now stands. I desire to make any change that will be an improvement, but if the sentence is already clear, we should certainly take care to avoid tautology. Now I will read the section again, and emphasize the words as I think they ought to be, and gentlemen will see, I think, that a multiplication of those phrases is scarcely necessary, and certainly it would not sound very well. If we can secure the same sense, without a change of phraseology that would destroy the euphony of the sentence, we should certainly do so, in accordance with the laws of composition. Now let us see how it should read:

"The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each *school district*, at least six months in every year."

The subject of the sentence is "common schools," and "a school" to be established "in each school district." These are the words

which should receive the stress of the voice. Then follows:

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein—"

In what?

Mr. WARWICK. In the district.

Mr. COLLINS. No, sir; in "such a school." That is the only proper construction. If the word "therein" does not refer to "such a school," then I do not understand the English language.

Mr. WARWICK. If the "district" does not stand in the nominative case, then I am not able to parse the sentence.

Mr. COLLINS. But what effect can that have? It only goes to show that it is the district which is to be deprived of its proportion of the school fund, for "district" is the nominative governing the verb "deprived." I would not object to any change there with a view to perspicuity, but I really do not think this is necessary.

Mr. WARWICK. If the gentleman thinks it is correct, all right; I hope the amendment will be withdrawn.

Mr. McCLINTON. I will withdraw it. I merely offered it for the sake of obviating any possible objection of that nature that might be made.

COMPULSORY ATTENDANCE—AGAIN.

Mr. DUNNE. I stated at the time the amendment was proposed, which was subsequently adopted, to strike out a part of Section 1, that I believed it to be a right which the State has to exact attendance from the pupils. I believe, also, that the only objection of any considerable weight which was urged to that compulsory clause contained in the Constitution submitted to the people last year, was the fact that it made no distinction between children whose parents reside in populous places, where there are abundant facilities for sending them to the public schools, and those residing in out-of-the-way places where it would be very difficult and sometimes impossible. I think it would be a wise measure to insist, that in incorporated cities and towns, at least, children shall be compelled to attend school, and we ought certainly to insert a provision of that kind in this article. It is in such places that children grow up surrounded by temptations which are not to be found, to the same extent, at any rate, in the rural districts. Our cities are always the hot-beds of crime, and schools of vice for the rising generation. It is from the cities, and from the class of children in them which neglects to attend the public schools, that most of our criminals come, and I maintain that where facilities for attending school are afforded, it should be made compulsory upon parents to send their children. And the reason why I think so is this: Ours being a Democratic form of government, every person upon arriving at mature age who was born in the country or has been naturalized according to law, who has not been convicted of crime, etc., has a voice in the administration of the public affairs of the country—in the making and administering of the laws—and I consider it only a fair proposition that he should not have that privilege unless he has some knowledge of the nature of the duties which devolve upon him. Therefore when the State has provided a system of public instruction, a means of obtaining education, it should also require that all who are to become its citizens, and take part in the formation of its laws, shall avail themselves of those means, or go so far at least as to know how to read and write.

Mr. HAWLEY. So far as towns and cities are concerned, I am not aware that I should very strenuously object to such a requirement, but there is one question which I have not heard satisfactorily answered, and that is, what are the means by which attendance is to be compelled?

Mr. DUNNE. That is a question which has received its solution in many countries.

Mr. HAWLEY. I know it has in Prussia, but where else?

Mr. DUNNE. In Scotland, also. Whether it has been done in any of the United States, I do not know; but I see no difficulty in the way of providing that between the ages of six and fourteen years, for example, all children shall attend school at least long enough to learn how to read and write. And I do not think that in a country like this any American citizen should be permitted to exercise the elective franchise unless he is able to read and write. That is my view of the subject, and for the purpose of testing the sense of the Convention, I will move, when it shall be in order, that a special committee of three be appointed to prepare and report an amendment providing that all children residing in incorporated cities and towns, between the ages of —— years, shall attend the public schools for at least three months in each year.

Mr. HAWLEY. Will the gentleman allow me a word or two further in the way of a suggestion? In drawing up this article we have provided that the Legislature may pass such laws as are best calculated to secure the attendance of children. My idea on that subject is, or was this: that the most practicable method of securing attendance would be to pass a law providing that unless a certain proportion of the children in each district shall attend, the district shall be deprived of its proportion of the interest on the school-money. The result of that would be that parents would feel more interest in having a full attendance, and would take it upon themselves to visit those who are less careful, and urge them to send their children. By that means, I think the interests of education would be best subserved and promoted. And the query arises, in my own mind at all events, whether under that general provision authorizing the Legisla-

ture to make such laws as are best calculated to secure attendance, it would not be authorized even to pass a law which should compel them to attend? It seems to me that if the word "may" is equivalent to the word "shall," and that point appears to be very generally conceded, then the Legislature already has all the power necessary. I am free to say, however, that I believe the incorporation of the provision as it stood in the former Constitution would be likely to array a large class of ignorant people against the Constitution, and against education. That is my own view of the matter. Still, I am perfectly content to leave it to the friends of education in the Convention, although I would submit to the gentleman from Humboldt, whether under the provisions of the section as it now stands, the Legislature would not have the power to compel attendance?

Mr. DUNNE. In regard to the power conferred upon the Legislature to secure general attendance, I like that provision, and so far as that is concerned, it is applicable all the year round. I have no doubt but that it would give power to temporarily suspend the attendance of children who may not be regular in their attendance, and that would be a great step towards preventing irregularity in that respect. A question has sometimes been raised as to the legality of the action of Boards of Education where they have attempted to compel scholars to be regular, and to that end have passed orders that if a scholar is absent a certain number of days or weeks in a month, he shall forfeit altogether his right to attend. There have been doubts as to the constitutional power of a Board of Education to make and enforce such an order, and I think this provision would go perhaps no further than to give power and force to an ordinance providing that unless a scholar is somewhat regular in his attendance, he may forfeit his right to remain in the school. But that is not the class which I wish to reach. I am aiming to reach that class which does not attend at all; to reach those parents who keep their children away for selfish motives, who take them away from school in order, perhaps, that they may earn a little money, and so deprive them of the advantages of education. I could not let this matter pass without bringing it to the attention of the Convention, and I propose merely to test the sense of the Convention as to the propriety of requiring all children between certain ages, to be specified, to attend school at least three months in each year.

Mr. COLLINS. I should dislike to have incorporated cities and towns designated in this article as the only places in the State where parents are unwilling to send their children to school, or to give them educational facilities. I admit that the evil is as prevalent in towns, possibly, as in the country, but in many country places there is very general neglect to provide good schools, and to induce children to attend them. Outside of cities and towns there are many men who have themselves been reared without education, and who look upon it as having a tendency to disqualify or unfit young men and women for hard work. Seeing no prospect before their children but a life of labor like their own, they regard education as objectionable on that ground especially. There are also, perhaps, a good many who retain their children from school on account of indifference, or from mercenary motives. Many keep their children at hard work, or, worse than that, allow them to run about in idleness, when they ought to be at school. I think, therefore, that if the provision is to be adopted, it should be made to extend further than merely to embrace incorporated towns. I would have it apply all over the State, and I am in favor of every appliance that can properly and justly be brought to bear upon the whole community, to exact from them such obedience to the requirements of the laws of the State as shall give to every child in the State some kind of education. If a parent is disposed to send his children to other than a public school, or to bring a governess or tutor into his own house to instruct his children, I see no objection to it, and the provision, of course, would not affect those cases; but where there is indisposition on the part of parents, whether resulting from their own ignorance, indifference, or avarice, the Board of Education should have some means of exacting the attendance of the children.

But I would not confine it to cities and towns. I would go out into the settlements—into your agricultural valleys, for example—where will be found the greatest amount of neglect and indifference. It is not in the large cities that you are most likely to encounter these evils. The best schools on the globe are found in the large cities of Europe and the United States. In the large towns is where schools always flourish, and they are supported and attended by all classes, more or less; but in the agricultural districts, in the remote and sparsely settled portions of the State, the influences which are most favorable for the promotion of the cause of education, are not so active, nor so much felt. There is not the same contact of mind with mind, men are not so much stimulated by ambition, and they do not so much value or appreciate the advantages of education, because they do not see so much of its influences upon the individual, the family, or the public at large. I was very reluctant, in committee yesterday, to accept the proposition to remove the clause requiring compulsory attendance of children on the schools, and I shall be perfectly willing to confer on the Legislature the power to exact attendance by law, at such times and in such places as may be deemed expedient. I know that in Virginia we suffer very much for the want of such a power, and if the Boards of Education had power to exact attendance for three months or six months in the year, it would be a great advantage to the

Territory. I know of many instances where it would have an extremely beneficial influence, and I am in favor of extending it all over the State. Rather than confine it, however, to particular places, I would prefer to let the section remain as it is. Then if the Board of Education of Storey County asks for such power, the Legislature may grant it, and the good influence arising therefrom will shine and reflect upon other localities, until they in their turn seek to secure the same advantages.

Mr. WARWICK. I think there are some subjects which are justly and properly objects of legislation, and among them, one of the most worthy is that of education. But while we are legislating on that subject, do not let us forget that we are living in a Republic, that a man's house is his castle, and that in it he has a perfect right to exercise full authority and control over his children—to send them to school, or to keep them at home, just as he pleases. The very character of our free institutions forbids this proposed interference with the private rights of the citizen. No man desires to promote the general interests of education more than I do; no man is more anxious to have his own children educated than I am; but I really think we are forgetting the spirit of our institutions when we are seeking to compel our fellow-citizens to send their children to the public schools. The moment we invade the home of any man, telling him that he must do this, and must not do that, seeking to make men good according to our notions of goodness, we are traveling, in my opinion, out of the line of our duty, and departing from the fundamental principles of our Republican form of government. I repeat, that the very spirit of our American institutions is in opposition to this proposition. We are not living here under a Prussian monarchy.

Besides, it seems to me that such a measure is entirely unnecessary, because the spirit and temper of our people is quite sufficient for all that gentlemen are aiming at. Here and there a man may be found who would keep his children at home, and deny them the privileges of education, but these cases are the rare exceptions, so rare as scarcely ever to require being looked after by the law-maker. We are legislating here for general principles, not special or exceptional cases, and I sincerely trust that we shall not adopt any provision which will allow a little body of men, assembled here to legislate for the State, to undertake to compel men to do that which only one government in the world, and that a monarchy, ever has had the courage to compel.

Mr. COLLINS. Let me ask the gentleman a question. Suppose a boy brought up in ignorance, in consequence of such breeding, commits a felony. If he is convicted, his imprisonment of course involves a charge to the State. Now which is the better investment for the State, to instruct him or to imprison him?

Mr. WARWICK. To instruct him, by all means. But Fagans are scarce. Men who train their children to crime, thank God, are not numerous. It may be that here and there a father or a mother may err in regard to the advantages of education, but that evil is not commensurate with the evil we should do by a palpable violation of the spirit of American free institutions. Let us not do evil that good may come. If this may be done, we may advance step by step in our encroachments, until by and by every right and privilege, now the pride of the American citizen, will be lost and destroyed. It is not by such means that morality, virtue, and religion are advanced in the world. They are encouraged and promoted by a wholly different process. Compulsory laws, enacted for the purpose of their advancement, never have been found to work well in practice, in any community, and ultimately, in the advancement of all those principles, the great apostles of reformation in every age and nation, after the trial of all other means, have been compelled to fall back on the great lever of moral suasion. You cannot enact laws to compel the education of the people, because the very spirit and foundation of our institutions are against it in principle. I should be sorry to see any article or section incorporated into the fundamental law of our new State, whereby any of these matters might be rendered compulsory upon the people. I have always looked with disfavor upon every description of sumptuary laws. Laws to enforce temperance, or compel virtue in any respect, are bad in principle, and bad in practice. You cannot legislate people into virtue. Other means have to be resorted to in the end, and they are found to be potent enough in our time to carry on all those great works of reformation and advancement. I sincerely trust the proposition suggested by the gentleman from Humboldt will not be incorporated into our Constitution.

[The PRESIDENT in the chair.]

Mr. MCCLINTON. I do not believe there is any gentleman on this floor who has a higher appreciation of the benefits to be derived from a good system of common schools than I have. I had the honor to graduate in the chimney corner, by the fire-light in my father's little, old log cabin, and I feel the want of a polite and classical education. I am willing, therefore, to do all I can to encourage common schools; all I can for the encouragement of every species of educational improvement, and morality; but I am not willing to carry my own desires so far as to bring them in conflict with what I consider one of the fundamental principles of our government. I cannot resist the conviction in my own mind, that the proposition to compel parents to send their children to our public schools, or to any other schools, is inimical to the spirit of our Republican institutions.

And I am opposed on other grounds, also, to the proposed amendment of the gentleman from Humboldt. If we say that in incorporated cities and towns we will compel parents to send

their children to school, we certainly make an invidious distinction in favor of people residing in the country, and that would be a palpable violation of the broad principles which we intend to lay down and establish, or which, unquestionably, we ought to implant in our fundamental law. I believe that education is a proper subject of legislation, but we should merely mark out here a sort of outline of the course which we intend the Legislature to pursue on that subject, and then leave the rest to the wisdom, intelligence, and patriotism of those legislators, who, we may be permitted to presume, will be not only as wise, but as earnest and zealous in the cause of education as we ourselves. For these reasons, I hope that the gentleman's proposition to refer the subject to a special committee, with instructions to add such a provision, will not be adopted.

Mr. DUNNE. With the consent of the committee I will withdraw the motion I made, inasmuch as it is not competent for the Committee of the Whole to appoint a special committee, and instead I will offer an amendment, which I have prepared and sent up to the desk.

The SECRETARY read the amendment, as follows:

"*Provided*, That the Legislature shall have the power to pass such laws as shall make it compulsory with parents and guardians that all white children under their charge, between the ages of six and fourteen years, residing in incorporated cities or towns, shall receive educational instruction for at least three months in each year, unless physically or mentally incapacitated."

The CHAIRMAN. I hope the gentleman will leave out the word "incorporated." There are but two or three incorporated cities or towns in the Territory, I believe. This city is not incorporated.

Mr. WARWICK. I wish to make one inquiry. Does the gentleman mean to give to negroes larger liberty than he does to whites? It seems that white people are to be compelled to send their children to school, while the negroes are not.

Mr. DUNNE. I will reply that my object is to make such provision in regard to education that those who are entitled to vote, may vote intelligently; but I do not mean by any action of mine to allow negroes to vote.

Mr. BANKS. If we leave this clause out entirely, will not the Legislature still have the power, as a reserved right, to pass such a law? It seems to me they would have that power without our saying anything more about it, and therefore this amendment simply enables, not requires, the Legislature to do what I think they already have the right to do.

Before I sit down, I wish to suggest a slight verbal amendment in the section as reported. It reads—"tend to secure *a* general attendance," etc. It seems to me it should read "*the* general attendance," instead of "*a*." That would be in accordance with the rules of grammar, which we certainly ought not to ignore in this article.

Mr. McCLINTON. I believe the Legislature has already as much power, in relation to compelling the attendance of children in the schools, as this Convention ought to confer.

The CHAIRMAN. I understood the gentleman from Humboldt, last on the floor, to suggest an amendment to correct the grammar of the original section. It certainly would be a bad place to ignore the rules of grammar in the educational feature of our Constitution.

Mr. BANKS. I merely say I think the word "the" would be more appropriate there than "a."

Mr. DUNNE. In reply to my colleague's remarks, I have only to say that in my judgment, unless we delegate this power expressly to the Legislature, they will not have it, because all the rights and powers which are not granted are reserved to the people.

Mr. CHAPIN. I hope this amendment will not prevail, because without it the Legislature will undoubtedly have the right to enact such laws under the language already contained in the section. It says at the end of this section:

"And the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools."

That is ample to cover the whole ground. The Legislature has that right already, and I believe there is propriety in it; and I do not think it will be any trespass or infringement upon democratic rights, either, to exercise that power. I think we should leave the section just as it is, for the whole ground is amply covered.

Mr. LOCKWOOD. I wish to say a few words, merely to throw out a suggestion to the gentleman from Humboldt who proposes this amendment. I have had some little experience in schools in California, and I know there is a class of persons to whom such a provision would be extremely repugnant. I have seen persons so bigoted in their religious faith—as, for example, the Roman Catholics, although I do not mean to mention them invidiously—that they would claim that all the public schools were sectarian, and rather allow their children to grow up in ignorance than attend them. Now the question is, it seems to me, whether or not it is better for the State to violate the prejudices of this class of persons, even for what we believe to be their own good?

Mr. DUNNE. This amendment does not propose to compel attendance on the public schools at all; it proposes merely to require that all children shall receive educational instruction to a certain extent, each year, and the parents may send them to school wherever they please. The objection suggested by the gentleman from Ormsby, therefore, does not apply.

Mr. LOCKWOOD. I think we have cases in point right here in town. We have no sectarian schools, but there may be a Baptist, a Presbyterian, or a Catholic, perhaps, who conscientiously believes that it is better not to educate his children at all, than to place them in our

public schools. Now the question is, shall we, on account of such religious prejudices, suffer children to grow up in ignorance in our midst? The operation of our form of government, and the principles upon which it is based, have been referred to in connection with this subject, but I will say that I do not see in those matters any particular bar to this amendment. Every gentleman knows, who is at all acquainted with the operation of religious or sectarian schools in Europe, that the principal part of the teaching is in regard to matters of religious belief. I think about two-thirds of the time of such a school is ordinarily occupied by the priests, or those whom they regard as their spiritual advisers. They do not teach their children any of the essentials of literature or the arts, but they confine their instructions rather to blinding them, as some of us might regard it, or indoctrinating them in their religious creeds, forms, and ceremonies. Now, sir, I do not wish to do violence to the conscience of the humblest individual in the land, by any provision which we may adopt in the educational feature of our Constitution, yet there is an opposite extreme. I will merely suggest this, however, that while I believe it is a very good thing for an individual to attend church, and that if everybody went to church on Sunday very few crimes would be committed on that day; yet I think the gentleman from Humboldt will very readily agree with me that if it were proposed to adopt a proposition in our Constitution compelling everybody to attend church on the Sabbath, it would not be sanctioned by a vote of this body.

Mr. DUNNE. One word only, in regard to the Prussian system which has been spoken of, and the time which the gentleman from Ormsby (Mr. Lockwood) thinks is taken up in religious instruction in schools of the class he has referred to. This amendment has nothing to do with the Prussian system, but there, as I understand, the usual school instruction is kept entirely separate from religious instruction, and not allowed to conflict with it in any way. Every parent who wishes religious instruction for his children, is required to register his name and creed, and at certain hours each day, set apart for that pupose, each child is instructed in the religious tenets of that creed. It does not interfere at all with the secular branches of education taught in those schools.

Mr. FRIZELL. No man can more fully appreciate the excellent motives of gentlemen who advocate the amendment, than I do. It appears that this same object which they are now endeavoring to reach, has in past years been the subject of discussion very frequently in other States. Now, sir, writers on the subject of crime tell us, and others who are not writers are willing to admit it, that ignorance is the parent of crime. Therefore it follows that if we can by law establish any system that will either induce or compel parents to educate their children, it will do very much towards preventing crime, and consequently will be a good thing for the State. But, not only various objections to the practicability of the measure proposed, but also the very spirit of our institutions, appear to stand in the way.

But what I wished to call the attention of the Convention to more especially, is the fact that there is another question which arises here, that has not been mentioned by any of the gentlemen who have occupied the floor on this subject. That question is the age at which children should be sent to school. You are perfectly well aware, Mr. President, and so is every gentleman here, that people differ widely in their views in regard to the physical education and mental training of their children. During the last fifteen years especial attention has been turned throughout the United States to the subject of the physical development of children. At the present time you will find no two parents out of three, perhaps, who would not be willing to send their children to school, even at the tender age of six years; and yet there are a great many who prefer at that age to let them play and exercise, and develop their physical systems, for a year or two longer, it may be, before going to school.

Now, sir, taking into consideration the many barriers that stand in the way of a proposition of this nature, I say that while I would be glad to go with these gentlemen, while I appreciate their motives and would approve of the object at which they are aiming, if we could only reach it, yet it seems to me entirely impracticable to make any provision compelling parents to send their children to school; and I object especially to that feature of the amendment which relates to the age of the children, because I know that many parents are not willing to allow their children to attend school at the age of six years.

Mr. COLLINS. I think the gentleman from Humboldt will find, upon a more careful examination, that the section already contains language which covers all the ground he desires. It says the Legislature "may pass such laws as will tend to secure a general attendance." There is something sufficiently elastic to cover everything which has been suggested during this discussion, to meet every changing condition of public feeling on the subject of education. If the Legislature shall hereafter deem it proper to enforce the attendance of all scholars of a certain age, it has the power to do so; or if the Legislature, coming up fresh from the people, shall be imbued with the idea that it is impracticable to make a general enactment of that kind, but the County of Storey, or Ormsby, or some other county, asks for the advantages of such a law, the Legislature has power to grant the request, and confer on such county the privileges solicited. The provision is elastic and comprehensive, and may be adapted to any want of any particular portion of the community, or any condition of progress of the public mind. On the other hand, this

amendment proposed by my friend from Humboldt, is peremptory and inflexible; and while I agree with him in the general principle, and believe that his amendment only provides for carrying out a great truth, yet it appears to me that at the present time it would strike the public mind with a degree of alarm and disapprobation, and I am inclined to think it would be wiser to leave the Legislature, from year to year, to adapt its action to the progress of public sentiment.

Mr. DUNNE. But does not my amendment leave it also to the Legislature?

Mr. COLLINS. Yes; but at the same time it makes an exaction, requiring a certain course of action by the Legislature.

Mr. DUNNE. No, no! The language is, "that the Legislature shall have the power to pass such laws," etc.

Mr. COLLINS. Yes, sir; but it also mentions particular ages, and consequently forbids the enactment of any law specifying different ages, although the Legislature might desire to extend the limit from six to eight years. I remember that my first child went to school as soon as she could toddle—almost as soon as she could speak; and she learned her lessons—everything they undertook to teach her—things which she forgot about as readily as she learned them. My own observation and experience tend to the conclusion that education, such as is generally imparted in the common schools, is not adapted to the weak minds of young children, and I am strongly inclined to favor the plan of combining physical and mental training, something like the system of "object teaching." I think the time may come when the age of eight years will be generally regarded as sufficiently early to commence the severe system of our schools. I think the section as it now stands covers all the ground we want to cover, while my friend's amendment is altogether too definite and specific. That limits the Legislature to a certain course marked out in advance, whilst this is expansive in its nature, giving the Legislature all the power they may require, not only to-day, but perhaps a thousand years hence.

Mr. HAWLEY. I wish to suggest to the friends of this proposition, whether it does not occur to them that parents might, in some cases, appeal to the law, and create troublesome litigation on this subject. I believe that if a law were passed under such a constitutional provision, to compel parents to send their children to school, and if a child were taken from its parents under the provisions of such a law, the parents would have a right to apply for a writ of habeas corpus, and under that could secure the release of their child. That is one of the grounds upon which I base my opposition to this amendment. My experience is not perhaps very great, but judging from what I have observed, I honestly believe that more can be done to build up the public schools by one man who will devote a little time to the subject—giving lectures on education, for example, through the country, and in that manner arousing the attention of men to the importance of educating their children—than ever would be accomplished by all the sumptuary laws that can be incorporated into any Constitution, or enacted by any Legislature or any Congress in the world. I desire, sir, without further occupying the time of the Convention, to enter my protest against the adoption of any such provision as is contained in this amendment.

Mr. BANKS. There is one further objection to this amendment which I wish to mention, and that is, that the Legislature would be inhibited, by clear implication, from compelling the attendance of children anywhere else than in incorporated cities and towns. I would urge this in addition to the fact that no such provision is necessary to give the Legislature ample power to enact whatever laws may be required, and I conceive that the last objection is a very strong one.

The question was taken on the amendment proposed by Mr. Dunne, and it was not agreed to.

NEW SCHOOL DISTRICTS.

Mr. CROSMAN. I have an amendment which I wish to offer. It will probably come in best about the middle of the section. I will move to insert after the words "during such neglect or infraction," the following:

"*Provided*, That the Legislature may make provision for the distribution of the school fund to school districts during the first year of their organization, without reference to the time that a school has been held therein."

Mr. HAWLEY. I suggest to the gentleman that if this amendment is to come in at all, it would be more applicable in the following section, where provision is made for the apportionment of the interest from time to time among the several counties. I attempted yesterday to remove the doubts of certain members upon that subject, and at a proper time I will renew my efforts to do so.

The CHAIRMAN. I think the amendment is appropriate in Section 2, as proposed by the gentleman from Lyon.

Mr. CROSMAN. My impression is, that the amendment comes in properly here, in Section 2 of the article under consideration. I wish to call the attention of the Convention to one fact in connection with this subject. If I understand the reading of this section, as it has been presented before us, it might occur that a new district having had a school in operation, even for a period of ten or eleven months, would get none of the school fund. In the first place, I understand that the first school year will embrace portions of 1864 and 1865, beginning and ending probably the same as at present. Then this section provides that a school shall be maintained in the district at least six months in every year, and under my interpretation, it might so happen that a new district would be

obliged to have its school in operation for eleven months before it would receive any appropriation. I called up this same question in the committee, but other members thought differently, and no action was had upon it. Upon looking at the matter further, however, I am satisfied that it might occur in the manner I have indicated. Now I consider that it ought to be our policy to so frame our Constitution that the Legislature may encourage the organization of school districts; and if there ever is a time when they need assistance, when the State should foster the interests of education in a district, it is at the commencement. Let us leave the time to the Legislature, and allow it to provide in its discretion, so that the new district which shall have had two or three months of school may receive its portion of the school money, but let us not compel a school district to go along without aid, for nearly a year, in the outset. At least, do not leave it so that the Legislature cannot encourage school districts in their infancy.

Mr. HAWLEY. Allow me a few words of explanation, as to the manner in which the distribution of the school money is made under our present system: The Superintendent of Public Schools of each county is notified twice a year—I believe in May and November—by the General Superintendent, as to the amount appropriated to his county. At that time, when such notification is made to the County Superintendent, the latter refers to his list of the school districts in his county, and the census of the School Marshal, and thus ascertains how much, *pro rata*, of the whole amount drawn by the county is to be paid to each school. The amount to which each scholar is entitled, multiplied by the number of scholars in any district, of course, will give the amount which must be paid to such district. Now under that system, if a new district is organized, no matter if it is only ten days before drawing this fund from the State, it has been placed on the record of the County Superintendent, with the number of its scholars, and the district receives its proportion of the fund the same as the other districts. The only question is, as to the time when it is to be paid to the district. If it has been organized only ten days, under the Territorial law it cannot receive the money immediately, but is required to have school for three months before the amount appropriated can be paid over. Now it is proposed to require the districts to have school for six months. In the meantime, the money is not to be given to the old districts, but their *pro rata* proportion is retained for the new districts. I think it is not very material at present, however, what arrangement may be made in respect to newly organized districts, for I believe that in all probability every district has already been organized that will be for some time to come. But even supposing that a new district should be organized two months prior to the framing and passage of the school laws, to take effect under the Constitution, when we become a State, I insisted yesterday in the committee, and I insist here to-day, that those two months will be accredited upon the first payment due to the district. I also contended yesterday, and still insist, that if we pay an equal proportion to those districts which have had school only three months, we thereby work an injustice and hardship to those which have maintained their schools perhaps nine months in the year, and in which the sums required for the payment of the teachers are, perhaps, more than two-thirds made up by private subscriptions. I candidly think that the more equitable plan is to require that, before any money is paid to a district, school shall have been taught therein for at least six months, and I think, still, that the gentleman from Lyon (Mr. Crosman) labors under a misapprehension as to the character of the requirement in regard to the length of time that school shall have been taught in a new district before it can receive its proportion of the school money. I insist that if a school shall have been maintained in a district two, three, or four months prior to the adoption of the Constitution, the district will be given credit for that length of time, and will receive its *pro rata* of the public money accordingly, and at the same time I am entirely opposed to allowing the money to be paid to any district before it shall have supported a public school for at least six months. I do not believe in compulsory education, and I think there is not in the Territory, and will not be in the State for a long time, any district in which a school will be maintained for a longer period, certainly, than nine months in a year.

Mr. CROSMAN. Allow me a word in reply. I may not, perhaps, differ materially from the gentleman from Douglas in regard to the term of six months, but I wish to have the language of the section so constructed that we can understand clearly that when a school has been maintained for six months, the district shall be entitled to the money. But this section says "every year." It requires that a common school shall be maintained "at least six months *in every year*," and it proceeds to provide that any district neglecting to establish and maintain such a school, may be deprived of its proportion of the interest of the public school fund during such neglect. Now, with regard to the time, I do not propose by my amendment to fix it definitely; I prefer to leave that to the Legislature. The gentleman tells us how the present school system operates, but he must remember that we shall have to be governed in the future by such rules as we fix and establish in this instrument, not by the practice under our Territorial laws. I think it is nothing but right for us to provide that any district organized within a few months of the close of the school year, when it has had school for six months—or I would prefer to say for three months—shall be entitled to receive its proportion of the school money.

Mr. COLLINS. My excellent friend, the gentleman from Lyon, thinks he perceives a difficulty, which, after a good deal of thought and turning the matter over carefully in my own mind, (for the gentleman suggested it to the Committee on Education while the article was under consideration in that committee,) I have been, I confess, unable to appreciate. I think the difficulties which occur to his mind have no real basis, for the reason that this constitutional provision is merely an outline by which the Legislature is to be governed. It contemplates that the Legislature shall establish a school system, and that one of the requirements of that system shall be that each district, in order to obtain its proportion of the public money, shall maintain a school for at least six months in each year. Now it is not to be presumed that the Legislature, in framing a school law under that provision, will so frame it as to deprive a school district just organized, or organized within the last three, or the last six months of the school year, of its proportion of the school money. The language of the section does not necessarily imply, in my opinion, that there must be absolutely six months of school teaching before the district can receive any money whatever. It does not require six months of school teaching within the school year, but it may be, as I understand, three months of school at the end of one year, and three months at the beginning of the next year. If in any district a school has been in operation three months in the school year, and had been organized three months in the previous year, it is not to be presumed that a legislative body, organizing a school system under great difficulties, is going to make such provisions as will cut that district off, and prevent its receiving any of the school money. The constitutional provision simply lays down the general principle that in every district there must be a school for six months in each year, and the penalty is, that if a district does not maintain a school during that proportion of the time, it cannot be allowed to receive any portion of the public money.

Mr. HAWLEY. May I be allowed one moment to repeat a statement which I made yesterday in the committee, and which I think may have some bearing upon this very point? It is, that the appropriation is made in all cases, but a school must have been taught in the district for the period of time required, before the district can draw the money. I wish the gentleman from Lyon (Mr. Crosman) to understand this perfectly.

The CHAIRMAN. The gentleman from Douglas will please to take his seat one moment. I believe there is not a quorum present. Let the Secretary count the Convention.

The SECRETARY counted, and reported that eighteen members were present.

Three or four other members having come in from adjoining rooms, a quorum was found to be in attendance.

The CHAIRMAN. We have had but little more than a quorum during a considerable portion of this afternoon, and the Chair will suggest that it will be necessary for members to remain in the Convention, in order that we may not find ourselves without a quorum for business. The gentleman from Douglas will proceed.

Mr. HAWLEY. As I was saying, the appropriation is made including any district which may have been formed, say ten days, or any other time within three months, before the notification to the County Superintendent of the amount due to the county. That appropriation then becomes a part of the property of that school district. It is held in trust for the district by the Treasurer, and cannot, in any event, be diverted from the use of such district, until the close of the year from the time the appropriation was made. It must lie there for the entire year, in order that the Superintendent may ascertain at the end of the year whether or not the district has been entitled to receive it according to law. I know it is so in my own county. I have now an appropriation of about two hundred dollars belonging to a district which has not complied with the law, and that amount must remain in the treasury for twelve months before I can throw it out of the district fund into the general fund of the county, for distribution among the other districts which have complied with the law. Therefore, I say that the seeming hardship, to which the gentleman from Lyon refers, does not exist. If newly organized districts continue their school for the time required, the money cannot be diverted from them, and will not be by any honest Superintendent; but if for the space of a whole year they refuse or neglect to comply with the law, then the money is divided among the other districts. I think it is an excellent check upon the several districts, and I trust it will be continued.

Mr. COLLINS. It is to be presumed that the Legislature, in framing or drafting a school law under our Constitution, will frame it, not, perhaps, in exact accordance with the present system, but in such a manner as to harmonize with the requirements of the Constitution. Now almost any man, if disposed to be critical, might point out difficulties likely to arise in the workings of any new system which we can devise. But all that this body can do, or ought to attempt to do, is to lay down the outlines of a general system, presuming that the Legislature will be as much interested, and have as deeply at heart the cause of common schools, as the members of this Convention. The members of the Legislature will have to exercise their best judgment in devising the means of carrying out in detail these general provisions, and they will undoubtedly frame their law with a view to meet any and all such difficulties as that which has been suggested by the gentleman from Lyon.

Mr. CROSMAN. But what right will the

Legislature have to frame a law providing for this difficulty, if in the Constitution we prohibit the Legislature from doing so?

Mr. COLLINS. I think there is no such prohibition, and I imagine it would be no particular trouble to me, if I had the time, to draft a law, under this provision, which should meet that very case. But even supposing that difficulty could not be met, still I maintain that it would be better to let the new districts suffer a little temporary hardship of that kind, than to have our whole educational system deranged. The great object is to stimulate the support of the public schools, and I wish it were possible to keep them going for twelve months in the year instead of six. We provide that the State shall offer a premium for the longer term of six months. We know that there are very few districts in which schools would not be kept from one to three or four months in the year, by the voluntary contributions of the citizens, even without the aid of the public money; and by offering this premium a stimulus is presented, inducing them to contribute such amounts as shall suffice, together with the public money, to carry on the schools for six months, at least; whereby they secure the advantage of the State aid, and are enabled to educate their children. The experience of all other States has shown the great advantages of such a system. I hope the gentleman from Lyon will withdraw his amendment, because I am satisfied that the difficulty which he apprehends does not exist in the section as it now stands before the Convention.

Mr. WARWICK. As it is nearly five o'clock, will the Chairman allow me to make a privileged motion to extend the time for the adjournment?

The CHAIRMAN. The gentleman will wait until the committee rises.

TIME OF MAINTAINING SCHOOLS.

Mr. BANKS. I prefer that we should simply require the Legislature to provide for schools for six months in a year, leaving all matters of detail for the Legislature to arrange, from time to time, as occasion may arise. I therefore move to amend by substituting these words, in place of the language now contained in the section:

"The Legislature shall provide for a uniform system of common schools, by which a school shall be maintained in each school district at least six months in every year."

The CHAIRMAN. The effect of that amendment would be, as the Chair understands, to adopt a substitute for Section 2.

Mr. COLLINS. I trust that amendment will not prevail. I hope that the Convention will be disposed to offer a premium to every school district in this State, which shall maintain a public school for six months in the year; and I also hope, most sincerely, that we shall provide in our Constitution for keeping out of our schools sectarian instruction. It will require strong influences to exclude such instruction, and money is the great moter—one of the most powerful influences of civilization. Wherever its power is brought to bear, it always has potent sway. The gentleman from Humboldt who offers this amendment is almost always right, but it seems to me that he has been a little wrong in his investigations on this subject, and therefore I trust that the Convention will not sustain him. If we adopt his amendment there will be nothing left which will be adequate to keep out sectarianism, and no stimulus which can be relied upon to keep up the public schools for more than one, two, or three months in the year; and if the Legislature has only the public school money, and no power to support the schools by taxation, perhaps, in many districts, they will not be maintained more than one month in the year.

Mr. McCLINTON. I suggest that the clause in the section as reported, prohibiting sectarianism, be incorporated into the amendment of the gentleman from Humboldt.

Mr. BANKS. I will accept that.

Mr. COLLINS. The gentleman from Humboldt may accept it, but I shall not.

Mr. BROSNAN. I desire to offer an amendment.

The CHAIRMAN. It is not now in order.

Mr. BROSNAN. I intend it as an amendment to the amendment proposed by the gentleman from Humboldt. It is to add to his amendment the following:

"But no sectarian instruction shall be allowed in any public school so established."

Mr. BANKS. I accept it.

Mr. HAWLEY. I do not wish to occupy the time of the Convention, but in my judgment the result of the removal of that section as reported, could not be anything but bad. Such action must necessarily have a pernicious influence. Sir, the object of the committee in framing Section 2, now under consideration, was to create a stimulus which would incite the different school districts to maintain their schools for longer periods than they otherwise would. But let the several districts have it in their power to put their hands upon the public funds, whenever a school has been taught in them for one, two, or three months, when they have taken up some strolling applicant for the position of teacher, and placed him in charge, to neglect his duties, as I know to have been sometimes the case in my own county, and it will bring forth no good results. What we want is a basis upon which to build the educational superstructure, by means of which we can afford every child a sufficient amount of instruction to enable it to go creditably through life. At the same time, we wish to make the people understand that with the limited resources of the State, and with the heavy expenses necessary to support the schools as they should be supported, they will be required to put their own shoulders to the wheel. Now, although I am a member of the committee which report-

of this article, I have no hesitation in saying that under its provisions, in my opinion, a law could be framed, and would require to be framed, which would accomplish those good results; and with all deference to the gentleman from Humboldt, I think that his amendment would result in the establishment of a system which would do but little good—which would contain no features calculated to sustain the interests of public education.

Mr. STURTEVANT. I move that the committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration Article XII, entitled Education, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

Mr. WARWICK. In order to enable the Convention to finish the consideration of this article to-day, I move that the time for adjournment be extended until half-past five o'clock, and then I will move, inasmuch as the Committee on Schedule desires to hold a meeting to-night, that at that time the Convention adjourn until to-morrow morning at nine o'clock.

The question was taken on the motion to extend the time for adjournment until half-past five o'clock, and it was agreed to.

The question was next taken on the motion that when the Convention adjourn, it adjourn to meet to-morrow morning at nine o'clock, and it was agreed to.

COMMITTEE OF THE WHOLE—EDUCATION.

On motion of Mr. STURTEVANT, the Convention again resolved itself into Committee of the Whole, (the President remaining in the chair,) and resumed consideration of Article XII, entitled Education.

NEW SCHOOL DISTRICTS.

The CHAIRMAN stated the amendments pending to Section 2.

Mr. DUNNE. It seems to me there are four or five amendments; I think they cannot all be in order.

The CHAIRMAN. The Chair will again state the question. In the first place, the committee has under consideration Section 2, of Article XII, as reported by the Committee on Education. The gentleman from Lyon, (Mr. Crosman,) moves to amend the section by incorporating a proviso, and to that amendment the gentleman from Humboldt, (Mr. Banks,) offers an amendment which is of the nature of a substitute, and is in order as an amendment to an amendment. A further amendment, suggested by the gentleman from Storey, (Mr. Brosnan,) was accepted by the gentleman from Humboldt, and therefore becomes a part of his amendment. Hence, the first question before the committee, is the amendment proposed by the gentleman from Humboldt, (Mr. Banks,) as subsequently modified by him.

Mr. FRIZELL. Mr. President—

Mr. BANKS. I ask the gentleman from Storey to give way one moment, that I may make a suggestion. It appears to me that the better course would be to put the vote first on the amendment offered by the gentleman from Lyon, (Mr. Crosman,) which I understand is to perfect the section. Then the question will properly come upon my amendment, to strike out the whole section, and insert instead the language which I have proposed.

The CHAIRMAN. If there is no objection that course will be adopted.

Mr. FRIZELL. In the outset of the remarks which I propose to make on the questions now pending before the Convention, I desire to say, Mr. President, that I am sorry to be impelled to utter anything adverse to amendments, coming as those do from able and good men; yet I feel it my duty to state why I shall be compelled to vote against them. I think that when anything like a system of education comes from the hands of such a committee as that to which this article has been referred, the men composing it being able men, who have devoted their entire attention to the subject for many days, it is entitled to most respectful and careful consideration at our hands. Certainly, sir, there are no more competent gentlemen in this Territory than those who compose that committee, and the important subject which they have had under their consideration is a theme suited to the men constituting the committee. Therefore, it seems to me that when a report comes from that committee to this Convention, it comes as a whole—in all its beauty, in all its force, in all its harmony. Sitting here, as one humble member, I might possibly find fault with a single section, as I hear it read by the Secretary, but unless I can hear the whole, take in and understand the harmony of all the parts, and appreciate the beauty and force of the entire report, I think I am scarcely competent to offer an amendment to any part of that report. And I apprehend that no member, no matter what his qualifications may be, can really make any valuable addition or amendment to the report, unless he can see through the beauty and strength and harmony of the whole of it; and hence I fear that any proposed amendment would be more likely to mar than to improve that harmony and strength. For these reasons, I am unwilling, unless gentlemen can offer something which will be extremely well marked and plain in the way of an improvement, to undertake to make any change whatever in the report which has been made by our committee.

The SECRETARY again read the amendment proposed by Mr. Crosman, as follows:

"Provided, That the Legislature may make provision

for the distribution of the school fund to school districts, during the first year of their organization, without reference to the time that a school has been held therein."

The question was taken, and the amendment was not agreed to.

PENALTY FOR NEGLECT.

The question was next stated on the amendment offered by Mr. Banks, as subsequently modified, to strike out the whole of Section 2, and insert instead the following:

"SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be maintained in each school district, at least six months in every year; but no sectarian instruction shall be allowed in any public school so established."

Mr. BROSNAN. Now, sir, I move to amend that amendment, as just read, by adding thereto the following words, which I find here in the section as reported by the Committee on Education:

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction."

Mr. BANKS. While I do not see any obvious necessity for that, I see no objection to it, and therefore I accept the amendment.

The question was taken on the amendment as thus modified, and it was not agreed to.

The question was taken on the adoption of Section 2 as reported, and it was adopted.

THE SCHOOL FUNDS.

Section 3 was read as follows:

SEC. 3. All lands, including the 500,000 acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841; the sixteenth and thirty-second sections in every township, donated for the benefit of public schools, set forth in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2, 1862, for each Senator and Representative in Congress; and all lands and parcels of lands that have been or may hereafter be granted or appropriated by the United States to this State; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land-warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds, or the bonds of this State: *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and provided further*, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

STATE UNIVERSITY.

Mr. DUNNE. I wish to speak to the last proviso, which authorizes the appropriation of such portion of the interest on the public school fund as may be necessary for the support of a State University. I find that special provision is made in the next section for a State University, and in a subsequent section there is a provision for levying a special tax for its support. Now I am entirely in favor of taxing the State for a State University, whenever the State can afford it. I believe, however, in turning our undivided attention, in the first place, to the common school system of the State, and I do not think that the interest derived from the school fund should be taken from the common schools and applied to the purpose of building up a State University. Therefore, because there is special provision made elsewhere for a State University, and because we ought to endeavor, in the first place, to secure to our children the advantages of a good common school system, I move that this last proviso in Section 3 be stricken out.

Mr. HAWLEY. Allow me to call the gentleman's attention, and that of the Convention, to the language of that section. It only provides for the appropriation of "such portion of said interest as may be necessary."

Mr. DUNNE. I am aware of that.

The CHAIRMAN. The question is on the amendment to strike out the last proviso in the section.

Mr. HAWLEY. It does seem to me, Mr. Chairman, that this is a matter which should be left discretionary with the Legislature. I do not think there is any danger that a body of men, elected by the people, and convened here to legislate for the interests of the new State, are going so blindly to work as to appropriate at once, and exclusively, the entire sum received for interest on the public school fund to the support of a State University, leaving the common schools entirely unprovided for. The gentleman from Humboldt must be well aware that to create a State University, to build up its various departments, and fill it with professors, is a work of time. It will, of course, be the duty of the Legislature, first, to locate and rear the structure, and it does seem to me that the Legislature will, beyond any doubt or question, agree with the gentleman from Humboldt, and the rest of us, in realizing the paramount necessity of preparing the new State for a University before they build it—of placing both parents and children in such a position, in the first place, that they may be competent to avail themselves of the advantages of a University. Therefore, I trust that the amendment will not prevail.

I desire, further, to call the attention of the gentleman to another provision in Section 6—the section which authorizes the special tax, to which he has referred—a provision which he has evidently overlooked. The section prescribes that this special tax may be appropriated "for the support and maintenance of said University, and *common schools*." Now I submit

to the consideration of the Convention, whether it would not be better to leave some little discretionary power on these subjects to the Legislature, and trust to its good sense in regard to appropriating such small proportion of the school funds as may be proper, towards laying the foundation of the material superstructure of the University. I have no doubt that they will devote a sufficient portion for the benefit of the common schools.

The question was taken on the amendment proposed by Mr. Dunne, and it was not agreed to.

Mr. BANKS. I call for the reading of so much of the section as relates to the sixteenth and thirty-sixth sections, donated by Congress for school purposes. I think there is a mistake as to the number of the sections.

The SECRETARY read that portion of the section.

Mr. TAGLIABUE. That is where the error is; it should be the thirty-sixth, instead of the thirty-second sections, according to the Enabling Act.

Mr. HAWLEY. It is a mere verbal error; I move that the Secretary be directed to make the necessary alteration.

By unanimous consent, the Secretary was instructed to make the correction, by substituting the word "thirty-sixth" for "thirty-second."

PUBLIC LANDS—CONSENT OF CONGRESS.

Mr. FRIZELL. I rise for information. I see that this section includes, and devotes to educational purposes, the lands donated by Congress for internal improvements. I would like to hear some explanation of that.

Mr. COLLINS. Our chairman proposed to bring in an amendment relating to that subject, after the section was read, and at his suggestion I will offer it. Allow me to explain, in the first place, that this is the five hundred thousand acres appropriated by Congress to each of the States for internal improvements, but which has been by most of the States diverted to educational purposes instead. The chairman makes a suggestion, however, which strikes me as a very good one, namely: that probably, or at any rate possibly, we cannot divert the land donated in that manner, and enjoy the benefit of it, without the authority of an Act of Congress, inasmuch as we are still a Territory, and therefore he proposes to insert a clause appropriating the land to this purpose, provided the permission of Congress can be obtained for devoting it to such use and purpose. I will read the amendment he suggests for the information of the Convention.

Strike out all of the first four lines of the section as printed, and add after the word "State," in the seventh line, the following:

"And also the five hundred thousand acres of land granted to the new States under an Act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841, provided that Congress makes provision for, or authorizes such diversion to be made for the purpose herein contained."

Let the Secretary read the section as it will stand with the amendment proposed by the chairman.

The SECRETARY read, as follows:

SEC. 3. All lands, including the sixteenth and thirty-sixth sections in every township, donated for the benefit of public schools, set forth in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2, 1862, for each Senator and Representative in Congress; all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this State; and also the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841;—*provided*, that Congress makes provision for, or authorizes such diversion to be made, for the purpose herein contained; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds or the bonds of this State; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; and provided further, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

The CHAIRMAN. I will state that the amendment presented, as I prepared it, makes no change in the section, except the transposition of the language and the addition of these words: "Provided, that Congress makes provision for, or authorizes such diversion to be made, for the purpose herein contained." I think that without the amendment a legal objection might exist to our making the provision absolutely, and incorporating it in our Constitution, without in any manner asking the consent of Congress.

The question was taken on the amendment offered by Mr. Collins, (in behalf of the chairman,) and it was agreed to.

The question was taken on the adoption of the section as amended, and it was adopted.

STATE UNIVERSITY—FREE ADMISSION.

Section 4 was read, as follows:

SEC. 4. The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanics arts, and mining, which shall be free to all white pupils possessing such qualifications as may be prescribed by the Board of Regents.

The CHAIRMAN. Without leaving the chair, by leave of the Convention, I would ask the Chairman of the Committee on Education to explain this section. I see that one of the essential features of the corresponding section in the former Constitution is omitted, namely,

that which required that the parents or guardians of the pupils shall be residents of this State. Is it contemplated that the institution shall be made free to all pupils, although their parents may not be residents of the State?

Mr. COLLINS. The committee had that subject under consideration, and was of opinion that there may arise cases where, if this school shall obtain the reputation which it is hoped it may acquire, by reason of our large mining interest, and the peculiarities of our agricultural lands, a restriction of that nature would be inadvisable. There may be individuals from other States who would like to avail themselves of the advantages of such a school, and who would be able and willing to pay liberally for their tuition, and that would be a source of revenue to the institution, and an advantage not only to those individuals, but to the public also. That consideration was what influenced the committee to make the change to which the gentleman refers.

[Mr. MCCLINTOCK in the chair.]

Mr. JOHNSON. I call the attention of the gentleman from Storey to the language of the section. I think it provides that instruction in the University shall be free to all pupils. If instruction is to be given free, I do not see how there can be any revenue.

Mr. COLLINS. If that is the construction to be placed upon the language of the section, the committee, I am sure, will be very anxious to change it. The University is to be placed under the care and direction of a Board of Regents, the members of which Board, it is presumed, will feel a strong interest in its prosperity; and as every such institution is languishing for want of money, it is hardly to be supposed that the Board will call in strangers to enjoy its facilities and advantages, unless the institution is to derive some benefit from them in return.

Mr. JOHNSON. This is the point I make: that when we declare that education shall be free in the institution, it is not within the province of the Board of Regents to prescribe regulations by which those pupils who come from abroad shall be compelled to make payment. I would prefer the language as we find it in the old Constitution. Whilst I would be in favor of making the University free for all pupils living within the State, I am unwilling to make it free also for those who come from abroad. The intention of the former Convention was, that free tuition should be given only to those whose parents or guardians might reside in the State, and as to those coming from abroad, the Regents would, of course, have the power to make such regulations as should be just and satisfactory.

Mr. COLLINS. I perceive the correctness of the criticism, and I think that some language should be added.

Mr. JOHNSON. I will move then to amend the section by adding the words as printed in the former Constitution: "And whose parents or guardians are citizens of this State."

Mr. NOURSE. Does not the section then exclude pupils residing outside the State, on any terms?

Mr. JOHNSON. I think not. The language of this latter portion of the section applies only to those whose parents or guardians are citizens. It gives the benefit of free admission to those living in the State, but there is nothing to prevent the Board of Regents from allowing others to enter upon such terms as they shall see fit to prescribe.

Mr. WARWICK. Would it not be better to incorporate in the section the idea that the Regents may prescribe the terms of admission of pupils from abroad?

Mr. JOHNSON. I do not think it is at all necessary. We only declare here the one proposition that the institution shall be free to those who reside in the State. That declaration is expressed in unmistakable language in the section, but nothing is said, directly or by implication, in regard to pupils who reside without the limits of the State. The Board of Regents may therefore prescribe such terms as they please for their admission, and I do not think that anything further is needed on that subject.

Mr. COLLINS. I do not think that the word "free," as there used, has reference to money. It strikes me that it means, rather, that all white citizens shall be at liberty to come in, under such rules and regulations as may be prescribed. I do not think the pupils are to be free in the sense that it is to cost them nothing, but that the privileges of the institution are to be free to be availed of by all the children in the State.

Mr. JOHNSON. I will only say this, that such was the sense in which the word was understood by the Convention which framed and adopted this section last year—namely, that children whose parents reside in this State shall be admitted free of charge. If, however, that word is not sufficient to convey our meaning, let us use language that will. I had something to do with the preparation of this article in the other Convention, and I know that the sense in which the word was understood then, was that education in the institution should be free. Now I repeat, if the word does not mean that, and we intend it, then let us substitute other words that will express our intention; and if, on the other hand, such is not our intention, let us adopt such language as will clearly express what we do intend. I am unqualifiedly in favor of providing that the instruction imparted in the University, to the children of the State, shall be without cost, and we can use that expression if gentlemen consider it more definite. But the word "free," as employed in the section, does not refer to white or black; I, for one, did not intend it to have any application or reference to the individual.

Mr. COLLINS. I am in favor, to a certain

extent, of free schools, and yet I do not believe it is the duty of the public, unless it has ample means, even to open the common schools without exacting some small compensation. If the State is pressed for money, limited in its resources, or overburdened with debt, it must require parents, even though they may be poor, to contribute something towards the expense of educating their children, although I would like to have all the schools free, in the most liberal sense of the word. I think that the word employed in this section should be changed, and I suggest that we say "open," instead of "free" —"which shall be open to all white pupils," etc., under such regulations as may be prescribed. I really never dreamed that it was proposed to make the institution perfectly free to everybody in the State, so that men might attend, if they pleased, up to the age of twenty-five, or over, at the expense of the State. I know there are many colleges having departments in which men, up to the age of thirty, receive instructions adapted to the various walks of life, but they always exact compensation for such instructions. It seems to me that we ought only to provide that the University shall be open to all.

Mr. JOHNSON. That might be susceptible to the criticism that it would be very inconvenient to keep the door open, especially on a cold winter day. [Laughter.]

Mr. COLLINS. I use the word in the common acceptation of the term. As to the word "free," where it occurs in this section—I do not find it at this moment, the report has been so much disarranged and mixed up—

Mr. NOURSE. Allow me to make a remark while the gentleman is looking for that section. It seems to me that when we have gone so far as to provide for a Mining Department, we have said quite enough; all the rest, in regard to establishing rules and regulations, might better be left to the Legislature. As to making the institution free, I do not think it is practicable with the small amount of population in the country—

Mr. COLLINS. I have the floor, I believe. I find the word "free" in the fourth line of the section as reported. It says:

"The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanic arts, and mining, which shall be free to all white pupils."

"Open to all white pupils," as I would prefer to say—

"Which shall be open to all white pupils possessing such qualifications as may be prescribed by the Board of Regents."

That, it seems to me, covers the whole ground, and we need go no farther. Under that section, you may let pupils in, if you please, from California, from Maine, from Georgia, or from Kamschatka.

Mr. WARWICK. The only objection I see, is that our State is rapidly increasing. It is well known that an institution of this kind will be eagerly sought after by all classes; and if we admit the pupils free, I doubt whether we shall be able to build an institution large enough to contain all that will apply. There must be a limit established. It will be like the Girard College of Philadelphia, the Smithsonian Institute, founded by a benevolent foreigner, and other similar institutions, all of which have a limit. Therefore I think, as the gentleman from Washoe has said, that when we have provided that such an institution must be reared, all the rest may be left to the Legislature. I will move to strike out all that latter part of the section.

The CHAIRMAN. There is an amendment pending already, and consequently the gentleman's amendment is out of order.

Mr. JOHNSON. I will say but a single word further. I have referred to the action of the former Convention on this subject, and the sense in which that body used the word "free," in the original section, and I think the members of that Convention who are present in this will not disagree with me in respect to the meaning which was attached to the word when it was there employed. Although the Chairman of the Committee on Education seems to differ from me in regard to the sense in which the word now appears, in the section under consideration, yet I certainly conceive that what I have stated is the correct meaning and import of the expression, and hence I shall insist on my amendment to add the remaining portion of the original section—"and whose parents or guardians are citizens of this State." I insist upon this because I do not wish to throw open the institution without cost to everybody who may choose to apply for admission.

There seems to be some considerable difference of opinion on this subject in the Convention, and I would like an opportunity to make some estimates in regard to it, and to present some reasons why, in my judgment, this Convention should accord the special privilege which I propose to the children or wards of the citizens of the State, without cost in money. I think I can justify that policy, and show that there are ample compensating advantages to result to the State from making such a donation to the children of the State.

But, as there is not sufficient time before the hour of adjournment to give proper consideration to this important matter, I will now move that the committee rise, report progress, and ask leave to sit again, for the further consideration of this article.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article XII, entitled Education, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

On motion of Mr. CROSMAN, at twenty-five minutes past five o'clock, P. M., the Convention adjourned.

SEVENTEENTH DAY.

CARSON, July 22, 1864.

The Convention met at nine o'clock A. M.

Mr. HAWLEY moved, in the temporary absence of the President, that Mr. Mason take the chair as President *pro tem.*

The SECRETARY put the question, and the motion was agreed to.

Mr. MASON declined to take the chair.

Mr. CROSMAN moved that Mr. Hawley take the chair as President *pro tem.*

The SECRETARY put the question, and the motion was agreed to.

Mr. HAWLEY accordingly took the chair, as President *pro tem.*

The roll was called, and all the members responded, except the following: Messrs. Ball, Collins, Crawford, DeLong, Earl, Fitch, Folsom, Haines, Hudson, Jones, Kinkead, McClinton, Morse, Nourse, Parker, Tozer, Wellington, Williams, and Mr. President. Present, 20; absent, 19.

Subsequently, Messrs. Collins, Nourse, and the President came in, and were recorded as present, on the roll-call.

Prayer was offered by the Rev. Mr. NIMS.

The journal of yesterday was read and approved.

LEAVE OF ABSENCE.

Mr. HOVEY. I ask indefinite leave of absence for Mr. DeLong, on account of the ill health of his wife.

Mr. BROSNAN. We have but little over a quorum now, and if we go on granting indefinite leave of absence to members, we shall very soon find ourselves without a quorum.

Mr. HOVEY. I will ask, then, that he be granted leave of absence for one day.

The question was taken, and leave of absence was granted to Mr. DeLong for one day.

Mr. JOHNSON. I ask leave of absence for myself this forenoon, having business to attend to.

The question was taken, and leave of absence was granted to Mr. Johnson in accordance with his request.

Mr. WARWICK. Leave of absence was yesterday granted to Mr. Earl, for one day only, but with an understanding that the leave would be extended, if the necessities of the case should require it. I now ask that he have leave of absence for another day.

The question was taken, and leave of absence for to-day was granted to Mr. Earl.

Mr. BRADY asked leave of absence for Mr. Folsom for one day, which was granted.

Mr. MASON. My colleague, Mr. McClinton, obtained indefinite leave of absence the other day, but under a late ruling of the Chair, I fear that it may not avail him, and therefore I ask leave of absence for him for to-day.

The question was taken, and leave of absence was granted to Mr. McClinton for one day.

Mr. KENNEDY asked leave of absence for Mr. Hudson for one day, which was granted.

IMPEACHMENT AND REMOVAL.

Mr. CROSMAN, from the Committee on Engrossment, reported correctly engrossed Article VII, entitled Impeachment and Removal from Office.

The report was received, and the article ordered on file for its third reading.

PHRASEOLOGY.

Mr. BANKS, from the Committee on Phraseology and Arrangement, submitted the following report:

The Standing Committee on Phraseology and Arrangement beg leave to report, that they have carefully examined the following articles, as engrossed and passed by the Convention:

Article VIII, entitled Municipal and other Corporations;
Article IX, entitled Finance and State Debt;
Article X, entitled Taxation;
Article XIII, entitled Militia;
Article XIV, entitled Public Institutions;
Article XV, entitled Boundary;
Article XVII, entitled Amendments.

And your committee recommend the following amendments:

In Article XIII, Section 1, line 2, before the word "organizing," strike out the word "the," so as to read—"The Legislature shall provide by law for organizing and disciplining the militia," etc.

In Article XVII, Section 2, strike out the last words "at such election," and insert the same after the word "cast," in the 24th line, so as to read—"Reference shall be had to the highest number of votes cast at such election for the candidates for any office, or on any question."

All of which is respectfully submitted.

JAMES A. BANKS, Chairman.

The PRESIDENT *pro tem.* The Chair understands that these amendments are only of a verbal character, the latter being merely a transposition.

Mr. BANKS. That is all.

The report was adopted, and the amendments agreed to by unanimous consent.

STATE SEAL.

Mr. CHAPIN, from the Committee on State Seal, submitted the following report:

MR. PRESIDENT—Your Committee on State Seal recommend that the following prominent features be represented upon the State Seal, to wit:

In the foreground, two large mountains—at the base of which, on the right, there shall be located a quartz mill, and on the left a tunnel, penetrating the silver leads of the mountains, with a miner running out a car load of ore, and a team loaded with ore for the mill. Immediately in the foreground, there shall be emblems indicative of the agricultural resources of the State, as follows: a plough, a sheaf, and a sickle; in the middle ground, a train of railroad cars passing a mountain gorge—also a telegraph line extending along the line of the railroad; in the extreme background, a range of snow-clad mountains, with the rising sun in the east. Thirty-six stars to encircle the whole group. In an outer circle, the words "The Great Seal of the State of

Nevada" to be engraved, with those words for the motto of our State, "All for Our Country."

SAMUEL A. CHAPIN, Chairman.

The question was taken on the adoption of the report, and it was adopted.

Mr. JOHNSON. I suppose it is necessary that there should be a motion to discharge the committee.

The PRESIDENT *pro tem.* It may be desirable hereafter for the committee to take further action.

SCHEDULE.

Mr. DUNNE. In the absence of the Chairman of the Committee on Schedule, I wish to say that we are not yet prepared to report in full, but we expect to present a partial report this afternoon or evening. There has been a meeting of the committee called for a quarter before one o'clock to-day, and it is very desirable that each county should be represented, if not by the regularly appointed member, then by some other member from the county, who may be admitted to participate in the deliberations, by vote of the committee. I hope there will be a full attendance.

LIMITATION OF SPEECHES.

Mr. KENNEDY offered the following resolution:

Resolved, That no member be allowed to speak more than once, nor longer than five minutes upon any one subject, and if said time be consumed, he shall not be allowed to explain his vote.

Mr. BANKS. I move to strike out all of that resolution, except so much as limits the time. I am willing to confine gentlemen to a limited time of speaking in debate, but if a member wishes to explain his vote, he should have that privilege.

Mr. KENNEDY. I will state that it is not my desire to limit debate, at all, but we have got into such a position that it is absolutely necessary, in my opinion, if we intend to make any Constitution at all, that we should finish it by Saturday night. I know that some gentlemen expect to go home to-morrow morning, and I am apprehensive that we shall find ourselves left without a quorum. I think it is time for us to vote more and talk less. I will suggest further, that if there should be some cases arise where it is necessary for a member to speak longer than five minutes, he can do so by unanimous consent.

Mr. DUNNE. That should be inserted, then, for as it reads now, it requires only a majority vote to extend the time.

Mr. KENNEDY. I will accept the suggestion, and insert the words, "except by unanimous consent."

Mr. CHAPIN. I will suggest an amendment, that the five minutes limitation be made to apply only to any question before the Convention. Then a member can make short speeches as often as he pleases, so long as he does not consume altogether more than five minutes of the time of the Convention.

Mr. JOHNSON. Perhaps we should go a little further and have a time-keeper appointed, if each member's time is to be divided into fractions. I will suggest, however, that the number of times of speaking is not limited by the rule heretofore adopted for the government of the Convention. And another thing, if we are to have such a rule, it is quite as important that it should apply in Committee of the Whole as in the Convention.

Mr. KENNEDY. I intended it to apply to both.

Mr. WARWICK. The difficulty is that there is frequently a delicacy on the part of the presiding officer, about calling a member to order who has exceeded his time.

Mr. JOHNSON. In regard to that, I will say that the rule which has governed the Convention hitherto regarding the length of speeches, in my opinion, left it discretionary with the Chair to call a member to order or not, unless objections were made. If, however, a different rule shall be adopted, which is imperative in its character, absolutely limiting the time of speaking, without reference to objections being made or not, I should, while in the Chair, feel it my duty to enforce such rule.

Mr. WARWICK. Very well; I hope the resolution will be adopted with that understanding.

Mr. CHAPIN. I hope it will be considered the bounden duty of the Chair to enforce the rule.

Mr. BANKS. I will withdraw my proposition to amend the resolution, because a member may make an explanation by consent of the Convention.

The PRESIDENT *pro tem.* Several other amendments have been accepted, I understand, by the mover of the resolution.

Mr. KENNEDY modified his resolution, so as to read as follows:

Resolved, That no member be allowed to speak longer than five minutes upon any one subject, either in Convention or in Committee of the Whole, and if said time be consumed, he shall not be allowed to explain his vote.

The question was taken upon the adoption of the resolution as modified, and it was adopted.

THE FINAL ENROLLMENT.

Mr. BROSNAN. I would like to ask a question for information, and that is, at what time the Constitution will probably be enrolled and prepared for the signatures of members of the Convention. I make the inquiry, because I learn that some of the members desire to leave this week, and I do not see how, in that event, their signatures can be obtained.

The PRESIDENT *pro tem.* (Mr. Hawley.) I will state that the Enrolling Clerk assures us, that every portion which has been placed in his hands will be ready by to-morrow morning, and probably, if any more shall be handed in to-day, it will also be included. Nevertheless, I will state, from the best information I can ob-

tain, that it will be impossible to have the whole instrument enrolled by to-morrow night. The article on the Judicial Department, and the Schedule will be very long, and those are not yet in the hands of the Enrolling Committee.

Mr. BROSNAN. I made the inquiry mainly in order that members of the Convention may be apprised of the fact that their signatures to the document are necessary.

Mr. JOHNSON. How many signatures are necessary to give it validity?

Mr. BROSNAN. I do not know; but it is usual for each member of a Constitutional Convention to append his sign manual to the instrument which he has assisted in framing.

Mr. CHAPIN. I hope to see it enrolled by to-morrow evening, so that there may be no loss of time. I trust, therefore, that the committee will attend to the business, and have the work done without delay.

The PRESIDENT *pro tem.* It will be impossible, unless the articles on the Judiciary and the Schedule shall be finally acted upon.

Mr. CHAPIN. We are going to act upon them to-day, I hope.

Mr. DUNNE. I do not think it will be possible to have it enrolled before ten o'clock on Saturday night; but perhaps members can pursue the same plan which was adopted by the last Convention—that is, sign their names in blank.

COMMITTEE OF THE WHOLE—EDUCATION.

On motion of Mr. DUNNE, the Convention resolved itself into Committee of the Whole, (the President *pro tem.*—Mr. Hawley—remaining in the chair,) and resumed consideration of Article XII, entitled Education.

FREE ADMISSION TO STATE UNIVERSITY.

The question was stated on the amendment offered by Mr. Johnson to Section 4, to add thereto the words—"and whose parents or guardians are citizens of this State;" so that the section would read as follows:

SEC. 4. The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanic arts, and mining, which shall be free to all white pupils possessing such qualifications as may be prescribed by the Board of Regents, and whose parents or guardians are citizens of this State.

Mr. JOHNSON. There was another amendment offered in the form of a substitute for the section, either by the gentleman from Washoe, (Mr. Nourse,) or the gentleman from Humboldt, (Mr. Banks.)

Mr. BANKS. I think that was lost.

Mr. JOHNSON. No, sir. I wish to call the attention of those gentlemen to the facts. I am confident there was an amendment to Section 4—in its character, a substitute for the section—offered by one or the other of those gentlemen.

Mr. BANKS. My recollection is, that I offered an amendment, which was voted upon, providing that the Legislature should pass such laws as would secure the keeping open of the schools for six months in the year.

Mr. JOHNSON. That was in Section 2; the one I allude to was proposed to Section 4, now under consideration; or, if not offered, it was at least read for information. The effect of it was, to omit all after the first three lines, stopping at the words "mining department," in the section as printed in the old Constitution. I think there was an amendment pending of that purport.

Mr. NOURSE. I believe I made that suggestion, but I made no motion.

Mr. CROSMAN. I will move to strike out that latter portion, after the word "Regents." That will leave the matter entirely open for legislative action.

The CHAIRMAN. The Chair recollects that objection was made to the latter clause on the ground of certain privileges to which children, whose parents or guardians reside in this State, are entitled, and in view of that objection the Chair was about to propose an amendment. I will suggest to the gentleman from Ormsby (Mr. Johnson) to present that amendment, which I think will do away with all the objections urged against the section.

Mr. CROSMAN. There does not seem to be any motion at present before the Convention, and I will ask the Chair to put my motion, as it has been seconded. That will leave the whole matter to the Legislature, to determine whether the institution shall be free for all children, or free for all white children, or what shall be the terms of admission in any and all cases.

The CHAIRMAN. There is a motion pending, the amendment offered by the gentleman from Ormsby. (Mr. Johnson.)

Mr. JOHNSON. I will withdraw that amendment. I do not consider it necessary, unless we retain the other portions of the section.

Mr. COLLINS. In order to harmonize this matter, I will say that I have no particular objection, for my own part, to striking out all, except that portion which requires the establishment of the University. And here is an amendment which has been handed to me that seems to cover the entire ground. It is to strike out the latter clause, and substitute the following:

"And the Board of Regents shall prescribe the terms upon which pupils shall be entitled to the privileges of said University."

Mr. CROSMAN. Now I submit to the Chair and to the Convention, whether it would not be more explicit, and better in every way, to let the section provide simply for the University, and then for a Board of Regents, and leave all the rest to the Legislature.

Mr. COLLINS. I am satisfied with that. Here is something, handed me by the gentleman from Lyon, (Mr. Crosman,) that would be short and concise:

"The Legislature shall provide for the establishment of a State University, which shall be under the control of a Board of Regents."

Mr. NOURSE. I like the general idea of that very much, only I would suggest to add to it, "whose powers and duties shall be prescribed by the Legislature," and not leave it to be inferred, perhaps, that they have absolute control. I will vote for it with that addition.

Mr. CROSMAN. I will accept of that, although I think it would rather be inferred.

Mr. BROSNAN. I rise for information, and would like to get the attention of the gentleman from Ormsby (Mr. Johnson) for a moment. I suppose it is intended, in the establishment of this institution, to comply with the Act of Congress of 1862, granting lands to the several States for agricultural colleges, and that Act, I believe, provides that the institution shall possess various features. It is not to be devoted to agricultural purposes only, but the mechanic arts and military tactics are also to be taught.

The CHAIRMAN. Allow me a word of explanation on that subject. There is another section which provides for these matters, and the gentleman will observe that it is not left discretionary whether those branches shall be taught or not.

Mr. JOHNSON. I will further suggest that the section which has been reported by the committee, is more extended than the printed section, in the old Constitution. The chairman of the committee will be able to explain the objects intended to be gained by the section.

Mr. COLLINS. The law of 1862, which has been referred to by my learned colleague, (Mr. Brosnan,) makes it obligatory that the college established by aid of the fund provided for, shall be for the purpose of the benefit of agriculture and the mechanic arts; and in prescribing the details of such institution, in one portion of the Act, it designates military tactics as one of the branches in which pupils are to be instructed. It also provides that the fund arising from the sale of the thirty thousand acres of land donated to the State for each member of Congress, shall be set apart for these specific purposes. The subsequent section, as it will be seen, provides for the matter fully.

And here allow me to say to the gentleman from Lyon, (Mr. Crosman,) that if his amendment is to prevail, I hope he will modify it so as to include this language: "A State University, embracing departments for agriculture, mechanic arts, and mining." I desire that modification merely for the purpose of covering the entire ground.

Mr. CROSMAN. I will accept that.

Mr. COLLINS. I will say, further, that so far as I am concerned, I would rather have preferred to leave the whole matter to the Legislature, but in deference to the former Convention, the committee desired to retain as much of the language of the original section as possible.

Mr. NOURSE. I do not know that my amendment will be necessary, as the section is now proposed to be modified, but it will undoubtedly cover the whole ground if we add "under such regulations as shall be provided by law."

Mr. CHAPIN. Allow me to suggest that we shall save time by having this whole article read through carefully, section by section.

Mr. COLLINS. Let me suggest to the gentleman from Lyon, (Mr. Crosman,) that the presumption is the Legislature would provide for a Board of Regents, even if there were no further provision on that subject.

Mr. MASON. I rise to a question of order, that we have not a quorum present.

The SECRETARY counted the Convention, and reported that nineteen members were present, being one less than a quorum.

Mr. CHAPIN. I will move that the committee rise, in order that we may have a call of the House.

The CHAIRMAN. I see that one member has come in since the count, making a quorum. I hope that members will bear in mind our attenuated condition, and remain in attendance as much and as long as possible.

Mr. CHAPIN. I withdraw the motion.

The SECRETARY, by direction of the Chairman, read through the entire article.

Mr. NOURSE. I find that Section 7 covers the whole ground, so that my amendment is not necessary.

Mr. COLLINS. The proviso in Section 8, I will state, was made in conformity with the requirements of the Act of Congress.

PRESERVATION OF SCHOOL FUNDS.

Mr. NOURSE. I see it is provided that the interest on the funds coming under the control of the Board of Regents, must be used.

Mr. COLLINS. Yes, sir. The law of Congress provides that if any portion of the fund invested shall, by any accident or contingency be lost, it shall be replaced by the State.

Mr. NOURSE. But this section provides that both principal and interest shall remain undiminished.

Mr. COLLINS. That refers to interest which may accumulate.

Mr. NOURSE. I understand that the interest must be used from year to year in carrying on the institution, and I think that portion relating to the interest had better be stricken out. You cannot apply the interest to the purposes of education, and have it, too.

Mr. COLLINS. I think very likely that the gentleman's criticism is just, and an amendment may be necessary there.

Mr. NOURSE. Suppose you use there the exact words of the Act of Congress?

Mr. COLLINS. By unanimous permission of the committee, I will amend that part of the section by striking out the words "interest and."

No objection being made, Section 8 was so amended.

ADMISSION TO UNIVERSITY—AGAIN.

The CHAIRMAN. Section 4 is now under

consideration, and the Chair understood the gentleman from Lyon to offer a substitute. Does he withdraw it, or insist upon it?

Mr. CROSMAN. I do not know that I understand the purport of the amendment proposed by the gentleman from Storey, (Mr. Collins.) Is it different from the report of the committee?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. The Chair will state that there appears to be only a little difference in the language, but no real difference in the meaning.

Mr. DUNNE. I wish to address a remark to the gentleman from Storey. The word "interest" having been stricken out by his amendment, leaves the word "principal" alone. Now would it not be better to use the word "capital?"

The CHAIRMAN. The gentleman is not in order. That amendment will not come up until the section is reached.

Mr. DUNNE. I understood the Chair to state the question on the amendment offered by the gentleman from Storey.

The CHAIRMAN. It is the amendment to Section 4. No other section is now under consideration.

Mr. COLLINS. I will state that my amendment is—although I am more than half inclined to leave the subject entirely to the Legislature—to provide that the Legislature shall appoint a Board of Regents, and said Board of Regents shall prescribe rules and regulations for the State University.

Mr. CROSMAN. Then I do not withdraw my motion. I think this amendment is much more concise and to the purpose, providing that the Legislature shall provide for the University and Mining Department. I want the Legislature simply to provide for the University, and then let it be under the control and management of the Board of Regents, as provided by law.

Mr. LOCKWOOD. I understand that the amendment of the gentleman from Storey (Mr. Collins) provides, in the first place, that the Board of Regents shall prescribe regulations for the University, and that then the section goes on to say, that pupils shall be admitted under the rules and regulations prescribed by that Board. If that is so, it looks to me like tautology.

Mr. DUNNE. It appears to me that this matter is getting very much mixed. I move that the committee rise, and recommend that the report be recommitted to the Committee on Education.

Mr. COLLINS. I think the amendment of the gentleman from Lyon (Mr. Crosman) is very complete, and all that is required. It is only a moment's work to agree upon it, so as to be satisfactory to all.

The CHAIRMAN. Does the gentleman from Humboldt insist on his motion?

Mr. DUNNE. Yes, sir.

Mr. FRIZELL. I hope it will not prevail. They can get the section perfected in a moment.

The question was taken on the motion that the committee rise, and it was not agreed to.

Mr. COLLINS. This seems now to embrace all that is needed. I will read it:

SEC. 4. The Legislature shall provide for a State University, embracing departments for agriculture, mechanic arts, and mining, to be under the control of a Board of Regents, as may be provided for by law.

Mr. CROSMAN. I accept that.

Mr. LOCKWOOD. I desire to suggest to the gentleman to put in the first line there, the words "for the establishment of." It seems to infer that, as it is, but it will make the language clearer.

Mr. COLLINS. Very well; I will insert that, if there is no objection, and will make another slight correction.

The SECRETARY read the amendment as finally modified, as follows:

SEC. 4. The Legislature shall provide for the establishment of a State University, which shall embrace departments for agriculture, mechanic arts, and mining, to be controlled by a Board of Regents, whose duties shall be prescribed by law."

The question was taken on the adoption of the amendment, as a substitute for the section originally reported by the Committee on Education, and it was adopted.

ESTABLISHMENT OF SCHOOLS.

Section 5 was read, as follows:

SEC. 5. The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may see fit; and all professors in said University, or teachers in said common schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article XVI of this Constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section, shall be entitled to receive any portion of the public moneys set apart for school purposes.

Mr. LOCKWOOD. I do not desire to delay action, but just to take the sense of the Convention, I move to strike out in the second line the words "normal schools." The Legislature is authorized to establish all grades of schools, and it is not necessary to mention normal schools specially.

The question was taken, and the amendment was not agreed to.

The question was taken on the adoption of the section as read, and it was adopted.

SPECIAL SCHOOL TAX.

Section 6 was read, as follows:

SEC. 6. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said University and common schools; *provided*, that at the end of ten years they may reduce said tax to one quarter of one mill on each dollar of taxable property.

Mr. CHAPIN. Before this section is adopted I would like to suggest whether it is not desirable to make one alteration. There seems to be provision made in a previous part of the article

for a school fund, which may be entirely ample, and I would like to alter this language, where it says the Legislature shall provide a special tax of one-half of one mill on the dollar. I move to strike out the word "shall," and insert, "may in its discretion."

The question was taken, and the amendment was agreed to.

Mr. DUNNE. What is the use, now, of the proviso at the end of the section?

Mr. CHAPIN. I move to strike out the proviso also.

Mr. DUNNE. I want that word "shall" put in again, and I hope it will be.

Mr. COLLINS. I regret that it has been stricken out, for I am confident the Board of Regents will have great difficulty in getting funds. It is always the case that institutions of this character are embarrassed for the want of funds, and I hope the committee will reconsider that amendment.

Mr. FRIZELL. There is no doubt that if any funds shall be needed for the State University, or for the support of normal or other schools, they will be provided. There will be American citizens in the Legislature, and if the money is needed, and they may in their discretion appropriate it, the Legislature will vote the required amount of money. There can be no doubt about that. On the contrary, it appears that there is ample provision made by this article, both for the schools and the University, and consequently it may be that no special tax will be needed. Now which horn of the dilemma is it best for us to take? I say we had better leave it to the discretion of the Legislature, because it is certain that the tax will be levied, if it is needed.

Mr. CHAPIN. I hope my amendment will be adopted striking out the proviso. Every gentleman knows that the hearts of our people are set on the common schools; and who can doubt that the Legislature, representing such a people, will levy a tax if there shall be any occasion for it? But I do not believe in compelling the Legislature to burden us with a tax, unless it shall be really needed; therefore I trust that the proviso will be stricken out.

Mr. COLLINS. The committee had in view the difficulties which every new State has encountered in the establishment of State Universities and the maintaining of the common school interest. Now this section contemplates that the Board of Regents will set aside the proceeds of this tax of one half mill upon a dollar for the special purpose of creating a fund, to be allowed to accumulate until there shall be money sufficient to lay the foundation of an institution such as the wants of the State may demand. Having the proceeds of the thirty thousand acres for each member of Congress, which will be ninety thousand acres for this State, they may set that apart as a permanent fund for the support and maintenance of professors in the University. If this matter of the special tax is left to the Legislature, what will be the result? That body will be under a pressure, a terrible pressure I have no doubt, which will impel them to postpone the tax from year to year; whereas, if the tax were levied at once, a small tax that nobody would really feel, it would go on gradually accumulating into a fund of some magnitude, until five, ten, or twenty years hence, as the case may be, it will become sufficient in the aggregate to lay the foundation of an institution that will be a benefit and an honor to the State. I hope we shall not neglect to provide for an important matter like this, while we are still in an embryo state. I do not believe that the Legislature is likely to be as earnest in this matter of education as gentlemen appear to anticipate. The Legislature of last winter demonstrated the fact that it did not possess that degree of earnestness on the subject that I had hoped existed. I trust, therefore, that we shall make such provisions in our Constitution that men coming into our State may come with a full conviction and assurance that a proper foundation has been laid for affording the means of instruction to their children as they grow up, without the necessity of sending them to other States to be educated.

The question was taken on Mr. Chapin's amendment to strike out the proviso, and it was agreed to.

The question was then taken on the adoption of the section as amended, and it was adopted.

THE BOARD OF REGENTS.

Section 7 was read, as follows:

SEC. 7. The Governor, Secretary of State, and the Superintendent of Public Instruction, shall for the first four years, and until their successors are elected and qualified, be a Board of Regents to control and manage the affairs of the University, and the funds of the same, under such regulations as may be provided by law; but the Legislature shall, at the expiration of that time, provide for the election of a Board of Regents, and define their duties.

Mr. CHAPIN. I move that the section be adopted as read.

Mr. NOURSE. I suggest that the words "at the expiration of that time," do not come in at the right place. It seems to me that they should be inserted after the words, "Board of Regents," where they last occur, so as to read; "but the Legislature shall provide for the election of a Board of Regents at the expiration of that time, and define their duties." As it is now, it would seem to imply that the period for any action of the Legislature will not arrive until the expiration of that time.

The CHAIRMAN. Does the gentleman make any motion?

Mr. NOURSE. I will move that the language be transposed so that the words "at the expiration of that time," shall come next after the word "Regents," where it last occurs in the section.

The Secretary read the section as proposed to be amended.

Mr. NOURSE. Perhaps it would be better still to say, "whose term of office shall commence at the expiration of that time."

The CHAIRMAN. Let me make a suggestion, that the language be so modified as to say that the Legislature shall provide for the election of a Board of Regents.

Mr. NOURSE. Very well; or "their successors."

Mr. COLLINS. What is the objection to the original section?

Mr. NOURSE. We merely mean to specify the term of office, or the beginning of the office; but this language might be construed to mean that the Legislature shall have no authority for the first four years.

The CHAIRMAN. The section as it now reads, states that the Legislature shall, "at the expiration of that time, provide for the election of a Board of Regents." That refers to the end of the four years. Now it might happen that the Legislature would not be in session within six months or a year after that time, and in that case would there not be an interregnum, when there would be no Board?

Mr. COLLINS. But the section says they shall hold for four years, "and until their successors are elected and qualified."

Mr. FRIZELL. The provision for the election of a new Board does not take effect until after the expiration of the term of office of the Board created by the section.

Mr. COLLINS. I can see no difficulty in that.

Mr. FRIZELL. The concluding clause requires that "at the end of that time" the Legislature shall provide for the election of a new Board. Consequently, there is no power in the Legislature to provide for the election of a new Board, until the term of office of the old one shall have expired.

Mr. NOURSE. I will have an amendment prepared in a moment.

Mr. CHAPIN. I suggest that we make it read that "the Legislature shall provide for the election of a new Board of Regents, and define their duties."

Mr. NOURSE. "And term of office."

Mr. DUNNE. I move to amend by striking out those last three lines, and inserting the following:

"But the Legislature, at its regular session immediately before the expiration of the term of office of said Board of Regents, shall provide for the election of a new Board of Regents, and define their duties."

Mr. CHAPIN. I hope that amendment will be adopted, but I would like to have the word "immediately" stricken out.

The question was taken on the amendment proposed by Mr. Dunne, and it was agreed to.

Mr. NOURSE. I move to add to that amendment the words "and fix their term of office."

Mr. BROSNAN. I think that is provided for already.

Mr. COLLINS. Section 4, I believe it is, covers that ground.

The CHAIRMAN. I suggest that the words "next preceding" should be used in the amendment just adopted, instead of "immediately before," so as to read—"The Legislature, at its regular session *next preceding* the expiration of the term," etc.

Mr. DUNNE. All right; let the Secretary make the change.

By unanimous consent, the Secretary was directed to make the amendment suggested.

The question was taken on the adoption of the section as amended, and it was adopted.

PRESERVATION OF FUNDS.

Section 8 was read—as previously amended—as follows:

SEC. 8. The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said mining department, in such manner as to make it most effective and useful. *Provided*, that all the proceeds of the public lands donated by Act of Congress, approved July 2, A. D. 1862, for a college for the benefit of agriculture and mechanic arts, shall be invested by the Board of Regents in a separate fund to be appropriated exclusively for the benefit of the two first-named departments in the University, as set forth in Section 4, above. And the Legislature shall provide that, if through neglect or any other contingency, any portion of the fund so set apart shall be lost or misappropriated, the State of Nevada shall replace such amount so lost in said fund, so that the principal of said fund shall remain forever undiminished.

Mr. DUNNE. I move now to strike out the word "principal," as well as "interest," in the last clause, and insert the word "capital."

Mr. BROSNAN. I will move that after the word "arts," in the proviso, there be inserted the words "and including military tactics."

The CHAIRMAN. Allow the Chair to suggest that the amendment offered by the gentleman from Humboldt takes precedence, and must first be disposed of.

Mr. BROSNAN. I thought that had been acted upon.

The question was taken on Mr. Dunne's amendment, and it was agreed to.

MILITARY TACTICS.

Mr. BROSNAN. Now I offer my amendment to insert the words "and including military tactics." My object in proposing such an amendment is this: The Act of Congress of 1862, with the provisions of which this section is intended to comply, requires that the interest on the fund, created by those provisions, shall be inviolably appropriated by each State for the endowment, support, and maintenance of at least one college, wherein the leading object shall be, without excluding other scientific studies, and including military tactics, to teach a knowledge of agriculture and the mechanic arts, and so on. Military tactics being specially mentioned, I have offered this amendment to conform to the requirement of the Act of Congress.

The question was taken, and the amendment was agreed to.

Mr. BROSNAN. With the consent of the

chairman of the Committee on Education, I would like to propose a further amendment, so as to conform to that last adopted. The section now reads, in one portion of it, "to be appropriated exclusively for the benefit of the two first-named departments." I would say "the first named department," striking out the word "two."

MINING SCHOOL.

Mr. FRIZELL. I am sorry, Mr. Chairman, to differ with the Committee on Education, which has recommended the passage of this section, and with those who are amending it. But, sir, I know of no great school, or college, within the limits of the United States, where the science of mining is especially taught; and if there is any locality in the United States, in which a college of that kind could grow up to great importance, it is here, at the foot of the Sierra Nevada Mountains, in this Territory. And what I dissent from, and wholly disagree to in this section, is the preference proposed to be given to agricultural science and mechanics, and even to military tactics, according to the amendment just adopted, over the science of mining.

The CHAIRMAN. I will suggest one consideration to the gentleman, right here, and that is, that this provision is directly in pursuance of the Act of Congress, which requires this fund to be specially devoted to those objects, and unless such provision is made the State will not be entitled to the benefit of the Act of Congress.

Mr. FRIZELL. I see the difficulty which arises, and I am glad to be corrected. If that is the case, I suppose no other course can be pursued than that which the committee has adopted.

Mr. COLLINS. Is mining anywhere mentioned in that Act of Congress?

The CHAIRMAN. No, sir. But it is contemplated in this article, as I understand, only to have a mining department. The question now is on the amendment, proposed by the gentleman from Storey, (Mr. Brosnan,) to strike out the word "two."

Mr. CHAPIN. I am sorry to detain the committee for one moment, but I would like to understand a little better this matter of confining the expenditures to those two objects. That, it seems to me, just defeats the section. I know that in the former Convention there was a deep interest felt in having a mining school provided for, and I know I had the honor to present the subject to that Convention myself. And one of the sections, as adopted by the Convention, and incorporated into the section now under consideration, provides as follows:

"The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said mining department, in such manner as to make it the most effective and useful."

But it appears to me that all that is rendered nugatory by this subsequent proviso.

Mr. COLLINS. This proviso was made in exact conformity with the Act of Congress, requiring the proceeds derived from this particular donation to be set apart exclusively for the specific purposes named in the Act—that is, for teaching the science of agriculture, and the mechanic arts, and military tactics. But I will suggest to my colleague, that the proviso does not include the five hundred thousand acres granted for internal improvements, the sixteenth and thirty-sixth sections of school lands in each township, and all the other sources of revenue, or advantages belonging to the school fund. The proceeds of the ninety thousand acres which we receive under the Act of 1862, and which we cannot receive or enjoy on any other conditions, we devote exclusively to those objects, conforming strictly to the letter and spirit of the law of Congress, but the proviso touches no other fund.

Mr. BROSNAN. I have a recollection of the object or intention which the former convention had in view at the time of framing this portion of the Constitution. The object was to comply strictly with the Act of Congress of 1862, but at the same time, in consequence of the peculiar condition of our State or Territory, and the necessity existing here for more thorough education and information in regard to mining pursuits, the Convention sought to provide for a mining school, or rather a mining department, in addition. The design was that the mining school should be a distinct department of that college which was contemplated by the Act of Congress, but in no manner conflicting with the requirements of that Act, the intention being simply to provide for the necessities of our people, who would derive great benefit from a thorough knowledge of the science of mining operations.

Mr. CHAPIN. I believe the gentleman has stated the views of the former Convention correctly.

Mr. COLLINS. If I may be allowed to say a word further, I wish to state that I think no one is more interested than I am in the subject of a mining school, and I fully believe that in this Territory a school of that kind, properly located and well conducted, would challenge the attention of people in other States, and be of immense advantage to our mining localities. It would save millions of dollars annually to the people of this Territory to have a good school in which the young, growing up in our midst, could be properly educated, and thoroughly inducted into a practical knowledge of the different branches of mining; how to locate and construct shafts and tunnels; the best mode of timbering a mine; the most advantageous process of reducing the various kinds of ores, and so on. Such a school would soon create a demand for our young men in every mining region, where they would be called upon to superintend mining operations.

Mr. STURTEVANT. I hope the gentleman will bear in mind that the mines are not to be taxed for the support of that school.

The question was taken on the adoption of the amendment proposed by Mr. Brosnan, to strike out the word "two," and it was agreed to.

The question was then taken on the adoption of the section, as amended, and it was adopted.

THE SPECIAL TAX—AGAIN.

Mr. DUNNE. I believe we have now passed through the whole article, and I move a reconsideration of the action of the committee by which the word "shall," and the proviso in regard to a special tax were stricken out of Section 6.

Mr. WARWICK. I will ask the gentleman if he voted in the affirmative on those questions.

Mr. BANKS. I voted in the affirmative, and I will make the motion to reconsider.

[Mr. COLLINS in the chair.]

Mr. HAWLEY. I most sincerely trust that the reconsideration will prevail, and that we shall make it mandatory on the Legislature to provide this special tax. I have read carefully the last published report of the Superintendent of Public Instruction of the State of California, the thirteenth Annual Report, and he lays particular stress upon the difficulty with which the Legislature of California has been prevailed upon to make sufficient appropriations for educational purposes. And at this very day, petitions are in circulation, and have been for some time past, throughout the whole of the State of California, for the purpose of receiving signatures praying the Legislature to impose upon the whole of the taxable property of that State, a tax of five mills on the dollar for educational purposes, instead of one-half of one mill, as we propose in this section. Now if the State of California can afford to pay a tax of five mills, I think the State of Nevada can certainly afford to pay one-half of one mill; and this Convention, taking into consideration its solemn duty towards the rising generation, should at least make it mandatory on the Legislature to impose a tax of that amount.

Time will not permit, nor is it necessary that I should recapitulate the arguments which have already been urged to show that among the first and the highest duties of the State, is the duty of educating the rising generation. Nobody will dispute that proposition, and I submit it to the good sense of the members of the Convention, with only the remark that they will reflect honor upon themselves and upon the new State, by making this provision mandatory, whereas if we shall leave it discretionary with the Legislature, which may be influenced by men in private life, or holding subordinate positions, to withhold the educational appropriations, or take only half-way measures from year to year, neglecting to do its whole duty, we shall be doing injustice to the rising generation, and a discredit to ourselves, if I may be permitted to use that remark in regard to the action of the Convention. Therefore I hope that the mandatory features of this section, as reported, will be allowed to remain unchanged.

Mr. DUNNE. The principal argument advanced in favor of striking out the mandatory language in this section was, that the Legislature would levy a tax, if necessary, without any question, and therefore it was not necessary to make the provision mandatory—that if the people of the United States, and of Nevada in particular, were firmly impressed with the necessity of any one thing in the general policy of government, it was the necessity of fostering and protecting the common school system. Now this State University is a departure from the general common school system, and it is exactly because it is such a departure that the Legislature may be unwilling to levy this tax, however necessary it may be. There is no doubt that the Legislature would readily levy a tax for the support of the common schools, but there has always been a great prejudice in the minds of many men against applying any portion of the public money to the establishment or maintenance of anything of the character of a college or university. Every possible argument has been advanced to defeat such appropriations, and devote the whole of the public funds to the common schools. Men would say, "Let us give the money to the education of the people, in their common schools, and allow those who want these new-fangled higher grades of learning to pay for such institutions themselves."

That is the reason why I think it may be sought to evade this tax, unless we make it mandatory. If it is left optional with the Legislature, then those who would cavil at such a tax would have an opportunity to work upon the members, and influence them to prevent the levying of the tax by saying that the measure would be objectionable to the people, and they would gain popularity by opposing it. At the same time, if the subject were left to the people, I think it would pass without question. It is a small tax, of only five cents on each one hundred dollars, but it will go on silently growing and accumulating, without attracting much attention, until at the end of five or six years, perhaps without any one having sensibly felt it, a fund will have accumulated sufficient to establish the University, or at least to start it upon a substantial basis. After it shall once have been set going, I have no doubt that it will be an object of so much advantage to the State that all men will feel an interest, and take pride in it, and there will be no difficulty in regard to obtaining appropriations for it. The amount of the tax proposed is very small, being only one-tenth of what is now being asked for in California, and I sincerely hope that the reconsideration will

prevail, and the section be allowed to stand as originally reported.

(Mr. CHAPIN in the chair.)

Mr. COLLINS. One reason why I would urge the propriety of the reconsideration, and letting the provision stand just as it did in the Constitution adopted last year, is, that we are operating under the law of Congress, ceding or donating three ninety-thousand acres for an Agricultural College, and by the terms of that act our mining department cannot receive or enjoy the advantages of that donation; but the fund derived therefrom must be set aside for certain specified objects. Now I ask where are we going to acquire the funds for our mining department? The only fund that we can have is that which will accumulate from year to year from this tax. That is what we must rely upon to supply and sustain this important department from which we hope to derive such great benefits and advantages in the future. I want the action of the Convention reconsidered, because I feel the absolute importance of the matter. We are situated here, far removed from the great seats of learning in the Atlantic states, and unless we make provision at an early day, by which the rising generation of our youths, soon to grow up and develop into manhood, can receive the advantages of education at our own hands, we shall be obliged to spend fifty times the amount that this contemplated institution would cost us, to educate our children at arms' length. It will be the greatest economy we can adopt to devise means and mature plans by which children can be educated in our midst, so that they may have an education corresponding with surrounding life; and in these departments of our State University we shall be able to provide the means by which they can acquire maintenance and good standing, and secure their own advancement.

While we are engaged in laying the foundations of a great and mighty State, do not let us be niggardly in such a matter, and by want of a comprehensive foresight on our part, in regard to the great wants of the future, force children to leave the State to acquire education. More than that, by such a course we discourage the immigration of that most valuable class which regards education as the very foundation of the State. We say to them —"Do not come here with your half-grown up boys, to dwell among, and unite your fortunes with us, because if you do, in a few years you will have to send your boys to the Atlantic States, or over the Sierras to California, to acquire an education, which we, engaged here today in laying the foundations of a great State, are unwilling to provide for, by requiring the small tax of a half a mill on the dollar to be levied on the taxable property of the State." I trust that those gentlemen who voted for the amendment will look at the consequences, and vote for the reconsideration.

Mr. BANKS. I really hope that this amendment will be reconsidered. Many men feel that education is something that can be done without, or delayed for a time. Private interests may be in the way, or the times may be dull, and in the Legislature men will agree that for that particular year they will make the taxes light by omitting this tax, hoping, perhaps, that the subject will be attended to the next year, when the times shall be better; and thus the matter will be postponed and neglected from year to year. That is the way it has been in California, and in other States in the Union. The cause of education has been thrust aside for other interests. I hope that no gentleman will vote finally on this subject without first considering that the real issue is this: Shall we, or shall we not, have established here a permanent educational institution, which is indispensably necessary for the permanent prosperity and for the credit of our proposed State?

Mr. BROSNAN. I will merely add a word. The Legislature shall establish the institution—we have determined upon that. Now, if gentlemen are afraid to say that the Legislature shall make this provision, and divide the fund between the University and the common schools; if they think it is too much, and that the funds are ample without a special tax, then I submit that they are not acting prudently about it, unless they reconsider, because they say the Legislature will do this thing—that we need not adopt this provision, because the Legislature is abundantly able without it—and if that is the case, the Legislature may see fit to make the tax even larger than we intend. Therefore, I say that on the ground of caution they should vote to reconsider, because here is a tax provided for which cannot prove to be burdensome.

Mr. FRIZELL. I hope the vote will be reconsidered. I am willing to concede to the opinions of the array of able and good men who are in favor of the reconsideration, and to adopt the reasons which have been assigned by them. The present occupant of the chair (Mr Chapin) will bear me witness that from the beginning I have been willing to leave anything doubtful or difficult which has arisen from time to time to the Legislature, but yielding to the arguments of good men, whom I know to have the cause of education at heart, I am willing to reconsider.

Mr. NOURSE. I am rather inclined to oppose the motion to reconsider. If the section as proposed by the committee agrees with the section as printed in the old Constitution, and I believe it does substantially, then this tax is a matter to be divided between the University and the common schools, and I am opposed to raising money by a State tax for the support of the common schools, for the reason that, as all experience shows, money to be expended economically, and to the best advantage, should be raised in such a manner as to be brought close home to all the people who are to expend it. If the people have to tax themselves for the money they expend, they will take better

care of it than they will of the money which they receive from land grants, or otherwise. I have been led to believe, for this reason, that the better policy is to provide that the neighborhood which raises the money shall expend it.

Then comes this question of the college. Sir, I do not anticipate so much advantage from a State College as other gentlemen seem to. It is true that we appear to have peculiar facilities here for a mining college—more probably than in any other place in the world—and if everything here proposed was going to that, I would be strongly in favor of it. But when we come to speak about establishing a college in general, in which the ordinary branches of a collegiate education are taught, I must say, while I would be very glad to see it prosper, that I have but little faith in it. It is too easy to reach other regions, where grass grows, to be trodden under the feet of the pupils, and trees to wave over their heads, and where they do not have to drink in alkali, like the bitter waters of Marah. I do not think, therefore, that a college here would be likely to flourish much. Still, I would like to establish and encourage a mining department, and I think the establishment of such a department is essential, and would be of great advantage to the State, and no doubt it would be well patronized. If the money proposed to be raised by this tax were to go to the mining department exclusively, and not, as I understand it is, to the care of the same men who have charge of the funds for the agricultural department, for which I think this Territory is no proper place, I should be glad to vote for the tax.

Mr. WARWICK. As our time is getting very short, believing that this subject has been fully ventilated, I call for the question.

The question was taken on the motion to reconsider, and it was agreed to.

THE TAX FOR COMMON SCHOOLS.

Mr. NOURSE. I now move to amend Section 6 by striking out the words "and common schools." I understand that the common schools are otherwise abundantly supplied, getting the advantage of all the land grants, and so on. I make the motion mainly for the sake of hearing how they are provided for.

Mr. HAWLEY. Until within the past year the manner in which the school fund was obtained from taxes, has been by the payment of all the taxes assessed in each county, including the tax for school purposes, from which the Territory received its share, and when the Territory had received such share, each county drew its proportion of the school money. That law was repealed at the last session of the Legislature, and now each county levies its own tax for a school fund. Douglas County has this year a school tax of fifteen cents on each one hundred dollars. Now we propose to levy this special State tax, because we think the people may not for some time obtain any benefit or advantage from the school fund derived from the sale of lands set apart for that fund. In addition to that, we expect that each county will levy a tax sufficient for its own local institutions, and if that is not sufficient to support the common schools, a portion of this State tax of one-half of one mill on the dollar may be appropriated. We expect, moreover, that there will be a balance left which will go towards creating a sinking fund for the benefit of the University, and we do not wish to go along with that at any snail's pace. While we do not desire to impose an onerous tax, which would cause the people to cry out under the burden, yet we do propose to make such provisions as will secure to the State such an institution as is best fitted to prepare its pupils for the duties of life.

Mr. WARWICK. Is it contemplated to set apart any portion of the tax for the purposes of the University?

Mr. HAWLEY. The section provides that the tax shall be levied "for the support and maintenance of said University and common schools."

Mr. WARWICK. Exactly. But that University being in the future, and the schools in the present, would it not be better, I suggest, to set aside some portion of it specially for the purposes of the University?

Mr. HAWLEY. I do not think so. I have already expressed my views on that subject. The first duty of the State, in my opinion, is to support the common schools, and if the fund for that purpose is not sufficient, as a consequence, persons interested will have to contribute to make up the deficiency, as they do at the present time. But if, on the other hand, there shall be more than is necessary, then we leave it discretionary with the Legislature to set apart such surplus as may remain, for the purpose of an endowment of the University. That is the system which we propose to inaugurate.

Mr. WARWICK. As the gentleman from Douglas is School Superintendent of his own county, he must be aware that the wants of any school district are only circumscribed by its means. For instance, a very plain school-house, and the commonest desks, will suffice, as long as the district is so circumscribed as to be unable to afford anything better; but if its means are increased, it must have a better school-house, and more elegant desks, and a larger number and better class of teachers. I admit that these things improve the schools very much, and are desirable, but unless we provide for specially setting apart a small portion of the tax to that object, we shall have no fund at all for the University.

Mr. HAWLEY. Allow me to say that that is left discretionary with the Legislature. The committee did not propose to legislate as to what disposition shall be made of every dime.

Mr. WARWICK. Then I understand that the Legislature has discretionary power to make such use of the fund as it may see fit.

Mr. COLLINS. I have faith to believe that the Legislature, having the fund in its care, will be disposed to use it to the best possible advantage. Our worthy chairman (Mr Chapin) has suggested that the words "mining department" be substituted for "common schools," proposing to have it read—"for the support and maintenance of said University and mining department thereof." That might, perhaps, devote this fund more directly and exclusively to the use of the mining department; but I am willing to leave the whole matter open to the Legislature, allowing that body, at any and all times, to be governed by the exigencies of the case. If the common schools are languishing, and there are no other funds to sustain them, of course they should not be permitted to suffer for the benefit of the University. They should receive the first care of the State, and next after them the University, and such branches thereof as the Legislature shall conceive to be most important for immediate development. I prefer to leave it all to the Legislature.

Mr. WARWICK. I attach great importance to the mining department clause in the provision for the establishment of this academy, college, or whatever it may be called, for the reason that I am satisfied there is more in it than gentlemen suppose, who have not examined the subject. I had occasion to investigate it to some extent while I was in California. There is a little college in a place in Europe named Freyberg, one department of which is devoted to the exclusive study of the subject of mines and mining; and that little college now has its students distributed in all parts of the world, wherever mining pursuits are carried on, and their services are in great request. And inasmuch as there is no portion of the world where there are such advantages for a school of that character as in Nevada, I imagine that it would be a paying institution and an honor to the State, and therefore I would like to see it encouraged in its infancy. I have no question but that it will be successful after it has once been fairly started.

Mr. NOURSE. I would like to modify my motion, because I do not wish to be placed in the position of an opponent of the common schools, when there is no one a more ardent friend than I am of our common school system. But I find that everything else is provided for, except this poor lone mining department, which really seems to be the most important of all, and therefore I propose to devote to that this half-mill tax, which I think will be none too large for the object. I propose to withdraw my former amendment, and, instead, to amend that portion of the section so as to read—"for the support and maintenance of the mining department of said University." It seems to me that is the only interest which is not already provided for, and it is the most important one.

The question was stated on Mr. Nourse's amendment as modified.

Mr. DUNNE. I prefer to leave the section as it is, and I differ with the mover of the amendment now pending, in the proposition which he advanced a short time ago, namely: that it was not, in his opinion, right policy to levy a State tax for the support of the common schools. In his able argument he stated as his reason, that he thought a school fund would be most effective, or that the most good would result from it, if it were to be raised from the immediate vicinity in which it is to be applied. But, sir, I think, in a country like the proposed State of Nevada, there is something due to those living in the outside portions of the country. When people go to those outermost regions, becoming the pioneers of civilization, enduring the hardships inseparable from a life in such a country, taking their families there, and endeavoring to build it up, I believe that some little consideration is due to them, and for that reason I say that a general school tax should be imposed, and the money derived therefrom divided all over the State in proportion to the number of the children in each locality. And the reason for it, in my mind, is this: that the more populous portions of the State ought to contribute somewhat towards the support of education in the outside places.

Now I represent, in part, what might be considered an outside place, and perhaps it may be said that I am open to the charge of being interested; but I explain my position in this way: That such a system works no injustice to the parents of children living in the populous counties, because they draw the same amount of money in proportion to the number of their children that is distributed to the children living in those outskirts of civilization; and the application of the rule is simply that the large capitalists of the metropolis, who have no children, and therefore derive no benefit to their families, or individually, pay their proportion for the education of the children of the whole State. What the capitalist pays goes to the general fund, and is thence distributed, and it works for the interest and advantage of the largely populated communities also, for the reason that they draw from the fund in proportion to the number of children they have, and hence they suffer no injustice. And it works no injury to the capitalist, because under the theory of our government he should be made to pay for the protection of his property, and I suppose it will not be disputed that there are no better means of affording such protection than the support of good common schools. Therefore he cannot complain—or if he does we should pay no attention to his complaints, but continue to levy a small tax upon his wealth, for the support and encouragement of public instruction.

For the reasons which I have stated, I should like to see the section left as it is, so as to permit this fund to remain in the treasury, to be divided among the educational institutions of the State, then leaving its particular disposition to the Legislature. If, upon the recommenda-

tion of the Superintendent of Public Instruction, the Legislature is willing to devote a portion of it to the mining department of the State University, let it be done; and if the Legislature deem that the public interest will be better subserved by devoting one-half, or a greater portion of it, to the common schools at large, let that be done. It is a question which depends upon the condition of things from year to year, and therefore we cannot now determine upon it, but should leave it to the Legislature to decide, from year to year, as the necessity of the case occurs.

And now I call attention to the necessity of adopting something here that shall be obligatory upon the Legislature. I want to make it positively mandatory upon that body. It is not necessary, however, to pursue that point further than to call attention to it. Besides, my time has expired, and I can appreciate the fact that this body is sick and tired of this protracted discussion.

Mr. STURTEVANT. I think the best way is to levy a direct tax on the mines for the support of this mining school, and I will suggest that the section be referred to a select committee of three, with instructions to amend so as to levy a direct tax on the mines.

The question was taken on the amendment proposed by Mr. Nourse, providing that the special tax shall be levied "for the support and maintenance of the mining department of said University," and it was not agreed to.

The question was then taken on the adoption of Section 6, as reported by the Committee on Education, and it was adopted.

The question was next taken on the adoption of the entire article, as amended, and it was adopted.

Mr. HAWLEY. I move that the committee rise, and report the Article on Education back to the Convention, with the amendments which have been adopted, and recommend its passage.

Mr. CROSMAN. I think we had better go forward with the other work before the committee.

Mr. LOCKWOOD. I think there is no more business to come before the committee in its regular order.

The question was taken on Mr. Hawley's motion, and it was agreed to, and the committee accordingly rose.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration Article XII, entitled Education, had made some amendments thereto, in which they had instructed him to ask the concurrence of the Convention, and recommended the passage of the article as amended.

The report was accepted, the several amendments adopted in Committee of the Whole were agreed to, and the article as amended was ordered to be engrossed for a third reading.

Mr. DUNNE. In order to get the article before the Enrolling Committee, I will move that it be considered engrossed, and put upon its final passage at this time.

Mr. HAWLEY. I hope that will not be done. There have been several amendments made, and the article should be engrossed. I will say further, that the Enrolling Committee have already enough work before them for the present.

Mr. DUNNE. Then I will withdraw the motion.

COMMITTEE OF THE WHOLE—SALARIES.

On motion of Mr. KENNEDY, the Convention resolved itself into Committee of the Whole, (the President *pro tem.*, Mr. CHAPIN, remaining in the chair,) for the consideration of Article XI, entitled Salaries and Appropriations.

Section 1 was read, as follows:

SECTION 1. For the first term of office succeeding the formation of a State Government, the salary of the Governor shall not exceed four thousand dollars per annum; the salary of the Secretary of State shall not exceed three thousand six hundred dollars per annum; the salary of the State Controller shall not exceed three thousand six hundred dollars per annum; the salary of the State Treasurer shall not exceed three thousand six hundred dollars per annum; the salary of the Surveyor-General shall not exceed one thousand dollars per annum; the salary of the Attorney-General shall not exceed two thousand five hundred dollars per annum; the salary of the Superintendent of Public Instruction shall not exceed two thousand dollars per annum; the salary of each Judge of the Supreme Court shall not exceed seven thousand dollars per annum. The salaries of the foregoing officers shall be paid quarterly. The pay of State Senators, and members of the Assembly, shall not exceed the sum of six dollars for each day of actual service, and forty cents per mile for mileage, going and returning. No officer mentioned in this section shall receive any fees or perquisites to his own use for the performance of any duty connected with his office, or for the performance of any additional duty imposed upon him by law.

Mr. DUNNE. I call for a division of the question, in order that the blanks to be filled according to the report may each be voted upon separately.

The SECRETARY stated (by leave of the Convention) that in accordance with the action of the Convention, accepting the report of the Committee on Schedule, he had filled the blanks in the original section, so that it now stood as a complete section.

INELIGIBILITY OF MEMBERS.

Mr. STURTEVANT. I have an amendment to offer. I move to amend the section by adding the following proviso:

"*Provided*, That no member of this Convention shall be eligible to any office—Executive, Legislative, or Judicial—for two years from the time this Constitution is adopted."

Mr. BANKS. I move to amend by adding—"Except the gentleman from Washoe, Mr. Sturtevant." [Laughter.]

Mr. STURTEVANT. I am not an office-seeker.

The CHAIRMAN. The Chair rules the amendment out of order. The question wil

be divided as requested by the gentleman from Humboldt, and the first question is on inserting four thousand dollars as the salary of the Governor.

Mr. HAWLEY. What do I understand the Chairman to say has become of the amendment offered by the gentleman from Washoe?

The CHAIRMAN. It has been ruled out of order.

Mr. STURTEVANT. I offered it in good faith, and I shall most assuredly have to appeal from the decision of the Chair. I would like to know what authority there is for ruling that amendment out of order?

The CHAIRMAN. It is ruled out of order, but the present occupant of the chair will not undertake to give any explanations. [Laughter.]

Mr. STURTEVANT. Well, then I appeal from the decision of the Chair.

The question was taken—"Shall the decision of the Chair stand as the judgment of the Convention?"—and decided in the affirmative. So the decision was sustained.

Mr. HAWLEY. I wish to explain my vote. With all deference to the Chair, I will say that I considered the amendment entirely in order, and hence I voted "no."

GOVERNOR'S OFFICE.

The first clause of Section 3 was read, as follows:

"For the first term of office succeeding the formation of a State Government, the salary of the Governor shall not exceed four thousand dollars per annum."

The question was taken on the adoption of the clause as read, and it was agreed to.

SALARY OF SECRETARY OF STATE.

The SECRETARY read the next clause, as follows:

"The salary of the Secretary of State shall not exceed three thousand six hundred dollars per annum."

Mr. HOVEY. I move to amend by striking out "six hundred," so as to leave the salary three thousand dollars.

Mr. JOHNSON. I hope that amendment will not prevail. I do not care particularly about the difference in the amount proposed, except that it will perhaps make a material difference in the character and ability of the class of men who will be selected for State officers. The gentleman is a very earnest friend of the proposed State Government, but I do not suppose he wants incompetent men chosen for State officers, so as to make it a failure in the outset; and I would like to learn where he will find the competent man who would take this position at the salary specified in his amendment.

Mr. HOVEY. I will withdraw the amendment as to the Secretary.

QUALIFICATIONS OF STATE OFFICERS.

Mr. JOHNSON. I think I may be permitted to say that I have some knowledge of the duties connected with the offices of Secretary of State, Treasurer, and Controller, and I regard their duties and responsibilities as about equalized. It is necessary that the Secretary of State should be a man of reputable character and standing—of ability and probity—although it is true that the material duties of the office are generally performed by subordinates. The duties of Controller require a man possessing—I would say, if our mathematical friend from Storey (Mr. Ball) were here—a financial head. He must, at least, be a man familiar with finance, able to understand the financial questions involved in questions of taxation and revenue, and must have capacity to present an intelligent exhibit of those matters, and generally to manage the financial affairs of the State Government.

In regard to the Treasurer, he is required to possess not so much of ability, perhaps, but he must be a man of undoubted integrity. If we are to have a State Government, and collect anything under our revenue laws, there will be a vast responsibility resting upon the Treasurer, whilst the mere labor devolving upon him will not be very great, in comparison to the other officers mentioned. Therefore, my impression is, that the labors and responsibilities of these officers are about equalized, and I do not think we can find a man whom you, Mr. Chairman, or I, or the gentleman from Storey (Mr. Hovey) who has suggested this amendment, would like to see supplying either one of these offices, who would be willing to accept it for a less salary than that specified in the section as it now stands. I think that is enough, and any less amount would be wholly inadequate.

The CHAIRMAN. There are to be no perquisites—none whatever. This salary is to constitute the whole compensation.

Mr. COLLINS. It embraces the fees of office, I understand, but how is it as to the *et cetera*—clerk hire, and so on?

Mr. JOHNSON. The duty devolves upon the Legislature to make such appropriations for those matters as it may judge to be proper. My impression is that the Secretary of State will require two clerks and the Controller one. I think that would be amply sufficient, and it may be, they can manage with even a less number. Very likely for the first year one clerk would suffice for each. As to perquisites, there possibly may be some "stealings," to use a very common term, but the Constitution, as we have adopted it thus far, certainly does cut off everything of that character. Clerk hire is a necessary expense, and the Legislature will be called upon to provide whatever of such expense may be necessary, it alone determining what is needful. The business in the office of Secretary of State may increase to such an extent as to demand more clerical force than we can now anticipate, but in that case the fees will increase proportionately, so that the

State will really be the gainer. And I will explain that. Gentlemen know this fact, or if they do not I can inform them, that at the present time there are very considerable emoluments belonging to the office of Secretary of the Territory. I do not fix the amount, nor would I state it as high, perhaps, as is generally supposed, but there is a very considerable amount of fees paid into the office of the Secretary of the Territory—fees for copying, for filing articles of incorporation, for furnishing certified copies of laws, and the like. Perhaps there may be twenty different instances of acts of an official character, where the fees go directly to the Secretary of the Territory. But under the Constitution which we propose to adopt not a dollar of those fees would be collected for the use of the Secretary of State—not one dollar.

The CHAIRMAN. The gentleman's time, under the rule, has expired.

Mr. NOURSE. I think the particular salary under consideration is well enough, but I shall not vote against any proposition to decrease that as well as the others, if we make an allowance for fees; and at the proper time I shall move to strike out the proviso which prohibits these officers from receiving fees, in cases where they have certain duties to perform, because if I go to an officer and want to have something done, like filling out a commission, or making a copy of a record, or transcript, I do not want to feel that I am taking half a day of his time without paying him for it. I want to be allowed to give him a fair compensation for his service, and I think other people would feel the same way. We may guard against making any claim upon the State for such extra service, and the Legislature can pass such a law as will be just and reasonable, in respect to the amount of the fees, but I do not want to make such a provision as will prevent the payment of any fees. Take, for instance, the office of Surveyor General.

Mr. DUNNE. Allow me to suggest that the language of the section is that no officer "shall receive any fees or perquisites, *to his own use.*"

Mr. NOURSE. Well, I would not feel any better about it, if the fee was to do him no good. The Surveyor General may be called upon to make a survey to be used as evidence in a Court of Justice. He makes his surveys in his official character, as Surveyor General, and only gets his salary of one thousand dollars a year, yet he may be called upon to go all over the Territory to make such surveys. It is certainly a duty connected with his office, and yet, although it may be very laborious, and involve considerable expense, he cannot under that proviso receive any fees or perquisites to his own use. I believe I shall vote for the salaries as they are, but not because I would regard them as sufficient for the services of every character which may be rendered. I believe the laborer is worthy of his hire, and while I think the Legislature should regulate the fees of office so as to be no larger than they now are, I shall certainly oppose the proposition to cut them off entirely so that the officers cannot be paid for services of that nature.

Mr. COLLINS. I like to know, when I am about to vote, whether upon this question or any other, exactly what I am voting for. Now I am opposed to dignifying men with office, and giving them adequate salaries, and then legislating to pay somebody else for doing what they ought to do themselves. I think that system has been, to use a popular expression, "run into the ground." I can see no reason why the Controller should want a clerk for more than one month in the entire year, and no reason why the Treasurer should want a clerk at all.

Mr. JOHNSON. With all respect to the gentleman from Storey, I do not think he has much practical understanding about the duties of those offices.

Mr. COLLINS. I have more confidence in my own general intelligence than the gentleman from Ormsby appears to entertain. I think I do know something about those offices, and I would like to have the gentleman from Ormsby, or any other man, tell me why the Controller needs a clerk, more than a few days, during the session of the Legislature, and what necessity there is at any time for a clerk for the Treasurer. I would like to have him show me why, with our present population, and the small amount of business there is in this Territory, it is necessary to give the Secretary of State a clerk, when he can perform the entire labor of the office himself. I have no hesitation about paying any officer for his labor, but I am opposed to paying him, and then employing others to do his work for him.

Mr. JOHNSON. The best evidence afforded us upon the point in regard to which the gentleman from Storey seeks information, is the fact that the present Secretary of the Territory has from two to four clerks constantly employed, and paid by himself. That is to me conclusive evidence that the public service requires as many as two clerks in that particular office. Mr. Clemens has had employed four clerks, and has two at the present time, paying their salaries himself, and he also labors efficiently, himself, many hours of the day.

Mr. COLLINS. It matters not to me how many he employs, under the present system. I would like to have any member point out to me, under the Constitution which we propose here to adopt, the duties that will require the constant labor even of the Secretary himself. And I say if we elect a man as Secretary and he accepts the office, he is bound to devote his entire labor to that office. Yet it is suggested by the gentleman that he be allowed two clerks besides. I am willing to vote to the Governor, to the Secretary of State, to the Controller, and to the Treasurer, each, a generous salary; but I want to know, when I vote it, whether the Legislature is going to be teased and lobbied,

and lobbied and teased, perpetually, for house rent, for office rent, for clerks that may have had an existence, and for clerks that may have had no existence. I want to know something about these matters before I vote for liberal salaries. The question before us is, Can we have a State Government? The times are pinchingly hard upon us. If we can show that for four years to come we can have a State Government which shall be cheap and well conducted, then there are thousands of men who will vote for it, who otherwise will not. If we shall leave it open and indefinite, so that our expenditures may either be run up to three hundred thousand dollars a year, or be brought down to seventy-five thousand, people will be greatly alarmed, and will instinctively grasp at the larger sum, and look with incredulity and contempt upon the smaller, and the consequence will be that we shall have no State Government. I say, let us look this question fairly and squarely in the face. Let us fix these salaries, and all other expenditures, as nearly just as possible now, and do not let us leave such matters open to the Legislature, to be increased indefinitely.

Mr. WARWICK. It seems to me that in political matters, as in everything else, too great a striving for economy is generally likely to prove the most expensive policy in the end, and I believe in the policy of paying a competent man all he is worth, rather than paying an incompetent man anything. And in order to secure competent men we must pay a competent price for their services. Any gentleman here who attended the lecture delivered the other night, I think will remember one thing which the lecturer impressed upon his audience, and that was, that when men want reliable information upon a subject of importance they do not stand upon the cost. That is undoubtedly the true policy. We are not in a condition to be extravagant, but I insist that the greatest economy, whether in the affairs of a State or in private business, is to pay a competent man all he is worth for the services he renders, and then you may be sure of securing efficient service. There is not a business man, or a firm, in the whole community, that would not rather pay a competent man a good round sum, for his services as clerk, book-keeper, or foreman, for instance, than pay an incompetent man anything. Now can we draw a competent man, a merchant or a lawyer, away from his own business, and get him to give his entire services to the State, for a single term of office, by paying him a sum of money less than he can make at his own business. We propose to call upon men to stand at the head of our Government, to carry it on, to manage its affairs, to control its money matters; we desire to select men for their probity, their honesty and ability; and I say the greatest economy will be found in paying them perhaps five or six thousand dollars a year, so as to enable them to live like gentlemen, rather than in screwing them down to a pitiful salary of three or four thousand dollars a year. By small salaries the State holds out inducements to men to become dishonest. That is a fact which is recognised by all business men, throughout the United States, and all over the world. I do not desire to consume the time, but I hope the Convention will adopt the policy of paying fair salaries for the services of good men.

Mr. KENNEDY. I wish to remind gentlemen that the salaries are fixed by this section only for the first term of office. After that, the Legislature can increase them, if it is deemed desirable.

Mr. FRIZELL. As to competency, I have no doubt that there are a great many men in this Territory perfectly competent to fill any of these offices, who would be willing to take them at the prices now specified. Another thing, when a man is elected he has a great many "blushing honors thick upon him," and inasmuch as these salaries are fixed only for two years, I think he should consider them satisfactory, and they will certainly be economical.

Mr. BANKS. Some gentlemen have referred to the knowledge which I know they possess in regard to this matter, and I am going to do the very same thing. I know this to be a fact, that in California a man has been elected to the office of Secretary of State who never knew, or pretended to know, anything about the duties of the office, and those duties have been performed under him by a man who had been deemed competent to preside over a high court of justice. And I will say further, that he performed the duties very efficiently and acceptably, and did so, I believe, for only two hundred dollars per month.

Mr. WARWICK. I suppose the gentleman refers to Judge Tuttle.

Mr. BANKS. Yes, sir.

Mr. WARWICK. I understand he received three hundred dollars a month.

Mr. BANKS. Very well; at any rate he was not the Secretary of State. And so it has been in other State offices. In San Francisco, too, while the office of County Clerk was held by a man who was receiving something like fifty thousand dollars a year—

Mr. BROSNAN. Ninety thousand.

Mr. BANKS. I wished to be moderate about it, and keep entirely within bounds, and hence I put it at the lowest possible amount. That officer never knew anything about the duties, and they were performed by a head clerk, who received a very moderate salary. Eventually, however, the compensation was reduced to four thousand dollars, and the County Clerk was required to perform the duties himself, taking the place of the head clerk. Now which course of policy shall we pursue? That of appointing men to office who can perform the duties efficiently, and requiring them to perform those duties, or that of creating offices, and selecting men to fill them whose only qualifications are, perhaps, that they can deport themselves in a

dignified manner, and then giving them clerks to perform the duties for them?

Mr. WARWICK. I move to fill the blank so as to make the salary of the Secretary of State four thousand dollars.

Mr. WETHERILL. Let us fix it so as to afford him a fair compensation, and then I am willing to give fees to his deputies—say for three months in the year.

Mr. STURTEVANT. I would like to see the amendment adopted which the gentleman from Lander has offered, for one simple reason; and that is, I cannot maintain my family here—I do not know how it may be with other gentlemen—on any less amount than that named in his amendment.

Mr. DUNNE. I rise to a point of order. The committee reported merely filling the blanks, and their report has not yet been adopted.

The CHAIRMAN. The report of the committee was agreed to.

The question was taken on the amendment proposed by Mr. Warwick, to fix the salary of the Secretary of State at four thousand dollars, and it was not agreed to.

Mr. DUNNE. Now I understand the Chairman that the report of the committee has been adopted filling all these blanks, and therefore nothing is in order, except such amendments as may be offered. It seems to me there is no necessity for any division of the question.

Mr. JOHNSON. I understand the question to be this: We have before us a report of a committee recommending the filling of certain blanks in the section with certain specified amounts. The gentleman from Humboldt (Mr. Dunne) calls for a division of the question, and the vote is thereupon taken separately upon filling each blank. The recommendation to fill the blank for the salary of the Governor with four thousand dollars has been adopted, and the question now being on filling the succeeding blank, as the salary of the Secretary of State, with three thousand six hundred dollars, it is competent to move to amend by naming a different sum. If the report had been adopted, I would consider a motion as out of order to strike out and insert, for the reason that the question would be one which had already been passed upon. The motion of the gentleman from Lander (Mr. Warwick) being negatived, the question now properly occurs on filling the blank with the sum recommended by the committee.

Mr. DUNNE. So I understood it, but the Chairman has ruled that the report of the committee was adopted, and the blanks all filled.

The CHAIRMAN. The Chair will now decide that the committee may take the course indicated by the gentleman from Ormsby, the President, and act upon each clause separately. Then gentlemen may amend the section as they please. The question now is on filling the blank for the salary of the Secretary of State with three thousand six hundred dollars.

The question was taken, and the amendment was agreed to.

CONTROLLER'S SALARY.

The SECRETARY read the next clause, as follows:

"The salary of the State Controller shall not exceed three thousand six hundred dollars per annum."

Mr. JOHNSON. I understand the Chair to decide that the report in the aggregate was not adopted, but, on the contrary, that the vote should be taken separately, as recommended by the committee, on each distinct clause of the section.

Mr. DUNNE. If that is the case, then in filling the blanks, under the rules, the smallest sum must be put first.

Mr. BANKS. My colleague is mistaken. Under Jefferson's Manual, by which we are governed, the largest sum must be put first.

Mr. STURTEVANT. The gentleman will find that rule on page 70 of the Manual, requiring the largest sum to be first put to the question, and the rule is referred to in a note—that the largest sum and the longest time shall be first put.

Mr. COLLINS. I confess that my mind is a little muddled as to the question before the committee.

The CHAIRMAN. If the committee desire to spend time in the discussion of questions of this character, the Chair cannot prevent it; but there is no question before the committee, except the adoption of this clause.

Mr. COLLINS. I want to vote intelligently, and I have a right to know what I am voting upon. Therefore, I have a right to make an inquiry, and I think it is the duty of the Chair to answer my inquiry.

The CHAIRMAN. The gentleman will propound his inquiry.

Mr. COLLINS. I understand that this report was accepted in the Convention as a whole. Now we are in Committee of the Whole, and we take up this report, and upon the suggestion of the gentleman from Humboldt, (Mr. Dunne,) we take up and consider these several clauses, one by one. There are no blanks in fact, the blanks having been filled by the committee, and their report accepted by the Convention before the article was referred to us. The question was first on the clause fixing the salary of the Governor, and it was adopted; then on the clause fixing the salary of the Secretary of State, which was also adopted—an important motion to amend by striking out, with a view to filling up with another figure, having been lost; and now the question is on the salary of the Controller, which is next in order. As I understand it, there is no blank there, but the question before the committee is on the adoption of that portion of the section as reported, providing for a salary of three thousand six hundred dollars for the Controller. Am I right?

The CHAIRMAN. Yes, sir; that is correct.

Mr. COLLINS. Now that I understand what I am voting upon, I am satisfied.

The question was taken on the adoption of the clause limiting the salary of the Controller at three thousand six hundred dollars, and it was agreed to.

SALARY OF TREASURER.

The next clause was read, as follows:

"The salary of the State Treasurer shall not exceed three thousand six hundred dollars per annum."

The question was taken, and the clause was agreed to.

SURVEYOR-GENERAL'S SALARY.

The next clause was read, as follows:

"The salary of the Surveyor-General shall not exceed one thousand dollars per annum."

The question was taken, and the clause was agreed to.

ATTORNEY-GENERAL'S SALARY.

The next clause was read, as follows:

"The salary of the Attorney-General shall not exceed two thousand five hundred dollars per annum."

The question was taken, and the clause was agreed to.

SCHOOL SUPERINTENDENT'S SALARY.

The next clause was read, as follows:

"The salary of the Superintendent of Public Instruction shall not exceed two thousand dollars per annum."

The question was taken, and the clause was agreed to.

SALARY OF SUPREME JUDGES.

The next clause was read, as follows:

"The salary of each Judge of the Supreme Court shall not exceed seven thousand dollars per annum."

Mr. KENNEDY. Is that the language of the section all through?—"Shall not exceed?"

The CHAIRMAN. Yes, sir. The Legislature can diminish it, but not increase it.

Mr. JOHNSON. I do not so understand it. My understanding of the intention of the section is, that it proposes to fix the compensation, in each case, for the first term, be it one, two, three, four, or five years. In my opinion, we should fix the compensation for the first incumbent, and the Legislature will then have no power to change it during such incumbent's term.

Mr. COLLINS. How many Supreme Judges does that provision contemplate?

Mr. JOHNSON. That is not indicated, as yet.

Mr. KENNEDY. I move to amend the section all the way through by striking out the words "shall not exceed" wherever they occur, and inserting instead the words "shall be."

Mr. COLLINS. I would like to know what benefit is to result from that?

Mr. BANKS. I, too, would like to know it.

Mr. COLLINS. As it is now, it leaves the Legislature the privilege of reducing the salary, if deemed expedient. We do not know but that four thousand dollars, two or three years hence, may really be equivalent to eight thousand now, because we cannot anticipate the future, and hence we should give the Legislature the privilege of reducing these salaries if necessary. I do not see what benefit is to result from fixing them arbitrarily, and so fencing the Legislature, let the stringency be what it may, to pay large salaries. The times may be such that competent men would be glad to serve for two thousand dollars per annum, and why should we tie up the hands of the Legislature, when we really do not know what the value of money is going to be a few years hence.

Mr. JOHNSON. Mr. Chairman—

Mr. KENNEDY. Mr. Chairman—

The CHAIRMAN. The Chair first recognized the gentleman from Ormsby.

Mr. JOHNSON. I was going to say, what probably the gentleman from Lyon (Mr. Kennedy) would have expressed, had he obtained the floor, that every man on becoming an aspirant for office naturally and properly desires to know what his salary or compensation is to be, if he is successful; and it is but just that we should fix the salaries of all these offices for the first term, if for no other reason than that the power cannot otherwise exist, before they are elected. If the Legislature were to convene prior to the election of State officers, then it might be proper to leave it to fix these salaries, for then the various candidates for office would be informed as to what their compensation would be. But that is an impossibility. There is no plan of government which we can propose or arrange by which the Legislature would be enabled to define the compensation, before the election of State officers. Therefore this amendment explains that which before was left undefined, on the question of compensation. If we say it shall not exceed a certain amount, in any case, we leave it in the power of the Legislature following the election of the officers, if the choice made by the people is not satisfactory to a majority of the Legislature, to fix the salary at such a low standard as to compel the resignation of the incumbents.

Again, I desire that the public mind shall be instructed in this regard. I want the people to know what is to be the amount of the salary of our first State officers, and also that there can be no deviation from the amount so named. In this way, we not only instruct the public as to the expense of our State Government, but those who may become candidates also, by the adoption of this proviso that the salary shall not exceed, and at the same time shall not fall short of, a specified sum, and thus we afford protection on the one hand to the people, and on the other to the incumbent. I really can see no objection to this amendment, fixing for their respective terms of office, the salaries of those who are to be first elected.

The question was taken on the amendment proposed by Mr. Kennedy, and it was agreed to.

The question was stated on adopting the clause previously read, fixing the salary of each of the Supreme Court Judges at seven thousand dollars.

Mr. STURTEVANT. How many are there to be?

The CHAIRMAN. That is not yet decided.

Mr. BROSNAN. The report of the Committee on the Judiciary fixes upon three as the number.

The CHAIRMAN. Does the Committee agree on that?

Mr. BROSNAN. No, sir.

Mr. JOHNSON. I dissent from the report respecting the number, and shall be in favor of five Supreme Court Judges.

Mr. COLLINS. I shall concur in that.

Mr. STURTEVANT. I suppose the term of office is not to be long, but this looks to me like a tremendous salary.

The CHAIRMAN. The gentleman can move an amendment.

Mr. STURTEVANT. Well, I move to reduce it to four thousand dollars.

Mr. COLLINS. I would like to hear the gentleman's reasons.

Mr. STURTEVANT. One of my reasons is, that the Supreme Court is not likely to be in session in the aggregate more than six weeks in the year.

Mr. KENNEDY. What does the gentleman expect them to do for a livelihood, outside of their salaries.

Mr. STURTEVANT. Let them work, as I do.

Mr. COLLINS. Is the gentleman willing to permit or require the judges to enter into the business of mining, quartz milling, and all that kind of business, and speculation?

Mr. STURTEVANT. Certainly I am, if they desire to.

Mr. NOURSE. The gentleman says he cannot live here on less than four thousand dollars a year. I suppose a judge of the Supreme Court would naturally have to be at more expense than he, would he not?

Mr. STURTEVANT. I would like to know whether or not the Supreme Court Judges are to act as District Judges?

Mr. NOURSE. No; they are only to act as the Court of Appeal. They are of course debarred from the practice of the law. They cannot work at their profession, which is their only means of support, for a judge of a court cannot very well, when his term is done, go to work in the harvest field. That would be a good deal like having a minister of a church swingling flax in the pulpit while the choir is singing. [Merriment.] If this were an office for life, like that of a judge of the Supreme Court of the United States, or that of the District Judges of the United States, it would only be necessary to provide for such a salary as would barely suffice to support a man handsomely, with perhaps a trifle beyond for contingencies; but when a man is elected for a term of only five or six years, he is expected to give up all his business, and then, after he has been out of business for that length of time, he is thrown out of office, or is liable to be, and has to begin his business anew. Under such circumstances it seems to me that something more than what will suffice for a bare living should be allowed him—something more than the four thousand dollars a year which the gentleman himself says is necessary for his own subsistence. Under all the circumstances it seems to me that seven thousand dollars is not at all extravagant, more especially when we consider the great probability that it will not be paid in gold at the time it is due, but will have to be taken in scrip. And what the chances are of that scrip being at par we can all judge pretty well. For my part I think it very possible that the seven thousand dollars will not be really worth in gold more than five thousad dollars.

Mr. STURTEVANT. I will withdraw my motion.

The question was taken on the adoption of the clause as read, and it was agreed to.

The next clause was read as follows:

"The salaries of the foregoing officers shall be paid quarterly."

Mr. JOHNSON. I move to amend by adding the words "out of the State Treasury."

The amendment was adopted by unanimous consent.

PAY OF THE LEGISLATURE.

The next clause was read, as follows:

"The pay of State Senators and members of the Assembly shall be six dollars for each day of actual service, and forty cents per mile for mileage, going and returning."

Mr. LOCKWOOD. I want to say a few words upon that. In Section 34 of Article IV, entitled Legislative Department, it is provided that the pay of members of the Assembly and Senators shall be eight dollars a day, and that was thoroughly discussed.

SEVERAL MEMBERS. That is stricken out.

Mr. LOCKWOOD. I have it down in my book here. For the first session they were to receive that, and then after discussion we concluded to leave it to the Legislature to fix the compensation subsequently. Now to adopt this clause, it seems to me would conflict with Section 34 of that Article, and for one, I am most decidedly opposed to cutting the pay of members of the Legislature down to six dollars a day—a sum barely sufficient for their support. I insist that it is good policy to pay men adequately for their services—to allow a sufficient amount of compensation to command the talent and ability of the State. I submit, sir, that any man who has brains enough to make him a competent member of a legislative body in our State, must think a great deal more of the honor of it than I do, at least, to consent to serve the people for such a compensation as this. Any man who has sufficient brains to be sent to the Legislature ought to be worth more than six dollars a day. I propose to make the compen-

million eight dollars a day, and therefore I will move to strike out this clause altogether.

Mr. TAGLIABUE. We had that section to which the gentlemen refers before the committee, and we found that it did not provide for any compensation, except certain contingent expenses. I will ask the Secretary to read the section as it was passed.

The Secretary read the section, as follows:

SEC. 26. The members of the Legislature shall receive for their services a compensation to be fixed by law, and paid out of the public treasury; but no increase of such compensation shall take effect during the term for which the members of either House shall have been elected; *provided*, that an appropriation may be made for the payment of such actual expenses as the members of the Legislature may incur for postage, express charges, newspapers, and stationery, not exceeding the sum of sixty dollars, for any general or special session, to each member; *and furthermore provided*, that the Speaker of the Assembly, and Lieutenant Governor, as President of the Senate, shall each, during the time of their actual attendance as such presiding officers, receive an additional allowance of two dollars per diem.

Mr. JOHNSON. I regret exceedingly to be compelled to disagree with my colleague on this or any other proposition, but, in this instance, I must dissent in toto from the views he has expressed. Whilst we had this matter under consideration, I was willing to assent to the sum specified in the section as just read by way of compromise, but at the same time my individual opinion was, and is, that it is too much. And such are my views for this, if no other reason, that a member is not inhibited from attending to his ordinary business. The term of the Legislature is limited to a short period, and, as I have stated, there is, as a general rule, nothing to prevent the members from attending to and transacting their ordinary business. There may be some cases, it is true, where they will be inconvenienced by reason of distance, but a great many, and probably a majority of them, can give some attention to their own affairs during the session.

Again, no man aspires to a seat in the Legislature solely for the money he can make there, and I submit that two, three, or four dollars a day will not make any perceptible difference in respect to the class of men who will accept of such positions. I hope that this provision will not be stricken out.

Mr. DUNNE. If the gentleman will permit me, I wish to say that the Committee on Schedule have appointed a meeting at a quarter to one o'clock, and we cannot meet at that time conveniently, unless we take our recess now. I therefore suggest, as it is the usual time for the recess, that the committee rise.

Mr. JOHNSON. I would have concluded all I had to say in a moment. Nevertheless, I will yield the floor.

Mr. DUNNE. I move that the committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article XI, entitled Salaries and Appropriations, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

The hour of twelve o'clock having arrived,

The PRESIDENT declared the Convention at recess until two o'clock, P. M.

AFTERNOON SESSION.

The Convention met at two o'clock, P. M., and was called to order by the President.

SALARIES.

Mr. TAGLIABUE. I move that the Convention go into Committee of the Whole for the further consideration of Article XI, entitled Salaries and Appropriations, which was left unfinished before the recess.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. BANKS in the chair,) and resumed the consideration of Article XI, entitled Salaries and Appropriations.

PAY OF THE LEGISLATURE.

The CHAIRMAN. When the committee rose this forenoon, the following clause of Section 1 was under consideration:

"The pay of State Senators and members of the Assembly shall be six dollars for each day of actual service, and forty cents per mile for mileage, going and returning."

The gentleman from Ormsby (Mr. Lockwood) had moved to strike out the entire clause, and the question now is upon that amendment.

Mr. JOHNSON. If the question is simply on striking out the entire clause, I would prefer not to present fully my views until that question shall be disposed of. However, I will say, on the general proposition, that I think the amount mentioned in this clause, which is six dollars per day, and forty cents per mile for mileage, is amply sufficient, and my individual judgment would be in favor of fixing the compensation at even a less sum, although I voted for this proposition, in the committee, as a compromise. It was found, upon the calculation which we made, that the forty cents per mile would pay the actual traveling expenses of the members, and also that the per diem of six dollars would suffice for their legitimate expenses during the session. Therefore, all their actual expenses, both in attendance at the capital, and whilst journeying to and from the State capital, would be paid by the State, and in my judgment this is all that the State should do. I feel confident that an increase of the per diem of two or three dollars, above the sum here specified, would not result in securing the attendance and services of a better class of men

in the Legislature—that it would not suffice to induce a different and better set of men to accept the position. On the other hand, it would, in the aggregate, materially increase the expenses of the State Government, especially since it is proposed to increase considerably the number of members of the Legislature, by changing the basis of representation. At a proper time, I will ask to be heard on the latter branch of the subject.

Mr. WARWICK. Is it not proposed to decrease the representation?

Mr. JOHNSON. No, sir. The proposition now is, as I understand, to adopt such a basis as will make the Legislature consist of thirteen Senators and twenty-six Assemblymen, which will be an aggregate of thirty-nine members of the Legislature. And anticipating that action, although perhaps not entirely in order, I may be allowed to suggest, that especially in view of such proposed increase, it is the better policy to fix the pay of the members of the Legislature at a moderate rate. I am strongly impressed with the conviction that it is not likely to make any material difference as to the individuals who will compose the Legislature, and it matters not whether the per diem shall be six or eight dollars, as a general rule, the same class of men will be found in the Legislature, at each succeeding session.

Mr. WARWICK. I move to strike out this whole clause, and so leave the question of compensation entirely with the Legislature.

Mr. KENNEDY. If you strike it out altogether, how are members of the Legislature to get any pay at all?

The SECRETARY. At the time the committee rose this forenoon, the question pending was on the motion of the gentleman from Ormsby, (Mr. Lockwood,) to amend by striking out "six," and inserting "eight," as the per diem.

Mr. LOCKWOOD. No, sir. I made that motion in the first instance, but I immediately modified it by substituting a motion to strike out the entire clause.

Mr. KENNEDY. That is the way I understood it. But I ask if you strike it out altogether, how will you provide for the pay of the Legislature at all? Because we have already provided in the Constitution that their compensation shall not be increased during their term of office.

Mr. WARWICK. If we strike out this whole matter, then there is no compensation fixed for the Legislature, and consequently nothing to be increased. To increase the compensation signifies to start at a fixed sum, and make that sum larger. It presupposes a starting point, and therefore it is evident that there can be no increase unless there is a fixed sum to start with. It will not be an increase, but a creation, if I understand correctly the signification of those words of our language. Therefore I maintain that if we provide no basis to start upon, the Legislature will be at liberty to establish its own compensation, without any violation of the Constitution. The idea of increasing from nothing would be an absurdity, but the compensation which the Legislature shall fix will be a primitive creation.

Mr. LOCKWOOD. I may be wrong, and I confess that I have heard arguments which weaken my position somewhat even in my own mind, but my idea was this, that inasmuch as we propose to leave to every Legislature the question of what shall be the compensation of the succeeding Legislature, inasmuch as we have adopted the provisions contained in Section 34 of Article IV, (or Section 33, as it is now numbered,) leaving the whole matter of compensation entirely to the Legislature, it seemed to me to be perfectly competent and proper for the first Legislature to decide what the pay of its own members shall be. The inhibition in regard to an increase, as the gentleman from Lander (Mr. Warwick) argues, can only apply after the compensation has once been fixed, because there can be no increase until there is something to increase. Now the members of the Territorial Legislature received a compensation of only three dollars a day, in greenbacks, but they passed a law creating for themselves an extra compensation of seven dollars per day, payable out of the Territorial Treasury. And I will say that in my opinion that was no more than just and proper, for the Territory is able and willing to pay the men whom it employs. It appears to me, therefore, that an appropriation made by the first Legislature for the payment of the per diem of its members would be legal, if we strike out this clause entirely, leaving no provision on the subject in our Constitution.

Mr. JOHNSON. But is there not a Constitutional inhibition remaining?

Mr. LOCKWOOD. Not as I understand it. I really do not think there is, if we strike this out.

Mr. WETHERILL. I think we had better fix it for the first year, and leave it for the Legislature to regulate afterwards. It is not necessary to fix a "speculative price," but let us put the compensation at a figure which will be large enough to pay the necessary expenses of the members, and nothing beyond that. I think six dollars a day is ample.

Mr. WARWICK. I will speak as briefly as possible on this subject. The proposition is made to pay the members of the Legislature six dollars a day, and now let us look at that proposition in a business light. It is proposed that the payment shall be made in cash, but we all know that, as the Scottish poet says—

"The best laid schemes o' mice and men
Gang aft agley."

Therefore, such a thing may possibly come to pass as the payment of the members of the Legislature in State scrip, and that may chance to be worth, like our Territorial scrip, somewhere from forty to fifty, and by rare good fortune even as much as sixty cents on the dollar. That

would make the pay of the members in the neighborhood of three dollars a day. And yet the gentleman from Ormsby (Mr. Johnson) tells us that there is ample provision in this per diem for the payment of the expenses of members at the seat of government. Now let us examine this question of mileage. A member from Lander County has to pay thirty-two or thirty-three cents per mile, in coming to the capital, and has to pay it, too, in gold coin, while you only propose to repay him in this depreciated scrip, so that he is compelled to make up a wide difference out of his per diem. I think it is the poorest kind of policy to refuse to pay your legislators a reasonable compensation, at least as much as you would a respectable bar-keeper, a brick layer, or a hod-carrier. That is not the way to keep men honest. The people everywhere raise their voices against stealing and corruption in the Legislature. I never saw anything of it myself, when I was a member, although I did hear a great deal of it outside, and I think our Chairman will bear me out in saying that while he was a member of the California Legislature not a dollar went into his pocket, at all events, except his per diem and mileage.

The CHAIRMAN. What is the gentleman's inquiry? Whether I believed the statements, or accusations, as to corruption?

Mr. WARWICK. Well, to bring it directly to a point, I will ask the Chairman if, while he was a member, he ever saw anything of this stealing and corruption? I know he did not. These things are talked about merely for buncombe, and not expected to be believed by sensible, well informed men. But the members of the Legislature should be well paid for their services, and for my part I do not think ten dollars a day would be too much.

Mr. WETHERILL. That would make a difference of somewhere about ten thousand dollars in the aggregate expenses of the State Government. Now, before men are elected to come here as members of the Legislature, they know what they are to receive, and when they consent to come they make a contract with the people to serve for so much compensation. I say, let them carry out that contract.

Mr. LOCKWOOD. I would like to ask the gentleman from Esmeralda, (Mr. Wetherill,) whether he would be willing to support a proposition to fix the per diem at two dollars and a half? Now, Mr. Chairman, I did not occupy my full time of five minutes when I previously had the floor, and I would like to say a word or two further on this subject. There is no State in the Union but pays to the members of its Legislature a larger per diem than they would be able to earn by their labor as common mechanics. That fact cannot be denied. And, sir, there is a just medium in this matter. Any man who ever transacted business, or who was ever connected with a mercantile firm, for any considerable length of time, will tell you, as one of the results of his observation and experience, that he may just as well, if not better, pay his employés a sufficient amount to enable them to make a living, because, if he does not, they will steal the balance any way. I believe that a sufficient compensation is an incentive to probity, and therefore the best policy is to pay our legislators a reasonable sum for their services. I do not wish to fix the amount at an exorbitant figure, but I honestly believe that ten dollars a day would not be too much. A member coming here from Lander County, for instance, or any other distant part of the State, is obliged to quit all his business for the whole session. If the office was one which was to last for a year, or for such length of time as would justify a man in fitting up a home at the capital, so that he might live here at a reasonable expense, it would be a different matter, and I would not object to fixing a lower rate of compensation. But the position of members of the Legislature does not permit of any such thing. I believe in allowing our law-makers to live here in a respectable way, enjoying respectable accommodations; and although the difference of ten or twelve thousand dollars for the session may seem to gentlemen a big bill, yet, in my opinion, there is scarcely a man in the State but would be willing to pay twenty-five cents out of his own pocket, if necessary, for the sake of having our State Legislature, for example, a tolerably well dressed body.

The question was taken upon the amendment to strike out the entire clause, and on a division the vote was—ayes, 6; noes, 11. So the amendment was not agreed to.

Mr. CROSMAN. I move to amend by striking out the word "six" and inserting "eight;" so as to fix the per diem of the first Legislature at eight dollars.

It has been urged upon this floor, in reference to the salaries of Supreme Court Judges, that they may not be paid in coin; and, on the other hand, as I am aware, it has also been stated that provision will be made for paying all those expenditures in money, as they become due. That, however, in my opinion, is a matter of very great doubt. And again, as has been remarked by my friend from Ormsby, (Mr. Lockwood,) the pay of members should not be less than that of mechanics; at least it has always been the custom in all States of which I have any knowledge, to pay members of the Legislature as much compensation as is obtained by good mechanics. I contend, therefore, that eight dollars a day is not too large a sum. At the same time, I wish to be understood as favoring an economical form of government. I consider that a per diem of eight dollars would be in harmony with an economical scale of expenditure, and I therefore hope that the sense of the committee will be to allow that moderate sum.

Mr. JOHNSON. Now, sir, in regard to this amendment, and the arguments adduced in its favor, I have to say this, that if you want to pay your State officers and your members of the

Legislature in cash, the way to accomplish that object is not by providing for extravagant salaries, and over-liberal compensation, but by making your government an economical one throughout.

This morning I opposed amendments which I thought were of an extreme character, reducing the salaries of officers in the executive department to so low a rate that, in my judgment, they would not be able to support themselves upon such salaries, to a manner befitting their positions. But in this case, the compensation is to be paid for merely temporary services—ninety days for the first session of the Legislature, and thereafter sixty days, and for any called session, only twenty days. For such limited service we propose to give the members of the Legislature a per diem of six dollars, as compensation for expenses whilst they are at the capital, and to allow them, besides, their mileage of forty cents per mile, to pay their expenses in coming to and going from the capital. I conceive that amount to be sufficient to pay the expenses of any gentleman who is fitted for the duties of a legislator, because those who run into extravagancies that enhance the bills they are called upon to meet, those who incur the amount and character of indebtedness which members of the Legislature sometimes contract at the seat of government, are not likely to be the more valuable class of legislators, and I do not think that such extravagant habits mark them as being predominently fitted for legislative position. We propose to give them an amount, in cash, sufficient to pay all their necessary expenses, and the way to secure the payment of such amount in cash, instead of scrip, is to economize in all respects, and in every case where it can properly be done, whilst at the same time taking care to avoid the other extreme, in the matter of reducing the salaries of those officers who occupy the more responsible positions. By this means we shall be able to give better security to those who may be candidates for official positions, that if elected they will receive the pay for their services in cash. The extra expenditure of ten thousand dollars here, ten thousand there, and ten thousand in another place, will augment to that extent the aggregate expense of our State Government.

Some questions will arise involving expenditures, which I regard as being of much more vital moment than this of the pay of the Legislature, and in the consideration of which I probably will be found differing with some members of the Convention—I hope not with a majority—in reference not only to the pay of State officers, but also the number of them to be provided for. Those matters, however, are not now before us. When the proper time arrives, I trust I shall have an opportunity afforded to give my opinions upon such matters. The proposition under consideration is, whether or not we shall fix upon six dollars as being, in our judgment, a sufficient amount to defray the necessary daily expenses of a member of the Legislature. And when we do that, I contend that we have made sufficient provision, and that an advance from six to eight dollars would not make any possible difference as to who shall be members of the Legislature. The gentleman from Lander (Mr. Warwick) is well aware that the Legislature will be made up of the same class of men in either case, and that gentleman may himself very likely, have legislative aspirations, as I know he has had heretofore.

Mr. WARWICK. The gentleman has been radically cured, I will remark.

Mr. JOHNSON. Possibly he may want to try it again. And let me add, without intending it merely as a compliment, that I know no man better able to represent his county efficiently and creditably. But be that as it may, if the gentleman shall be desirous of making some friend of his United States Senator, six dollars a day would secure his services in the Legislature just as readily as any other sum. So it would be with my honorable friend the Chairman, (Mr. Banks); I am confident it would make no difference with him; nor would it with my friend and colleague from Ormsby, (Mr. Lockwood), who has been a most faithful representative of our county in this Convention. It will make no possible difference with him, now I venture to say with any other member of the Convention. And, to take a more extensive view, throughout the entire State it would be found that the same individuals would be here as representatives, be the per diem six dollars or eight dollars. Therefore, inasmuch as the smaller sum will save a very considerable aggregate amount to the State, I am opposed to the increase suggested.

Mr. WARWICK. I wish to call attention to one fallacy in the argument of the gentleman from Ormsby, (Mr. Johnson), who has just taken his seat, and that is in relation to his assertion that it will make no difference in the individuals composing the Legislature, whether the per diem shall be six dollars or eight dollars. If that will make no difference, then of course, by the same reasoning, it makes no difference whether it be four dollars a day or six dollars, and carrying it still further we might cut the per diem down to two dollars, or one dollar, and still it makes no difference. There was another argument which I am sure the gentleman would not have advanced if he had reflected upon it a moment, namely, that the job is a short one, and therefore the compensation may be small. Sir, we all know that short jobs are invariably better paid for than long ones.

Now, sir, the gentleman from Ormsby must be well aware that there is a very wide difference of situation between the man who comes here as a member from Lander County, and the man who lives right at the capital, representing a constituency in this immediate vicinity. The former must leave his business entirely, for the whole session, whilst the latter, supposing him to be a member of the legal profession, may at

ery moment step out of the chamber in which he holds his seat, and return, inside of an hour, perhaps, with a constitution for forty or fifty dollars in his pocket. Some gentlemen have done that, during the session of this Convention, but it is a thing which could not possibly occur with us poor wretches who come from a distance. [Merriment.] From our great desire to serve the State we have been obliged to neglect our own affairs, and consequently we have turned off all our efforts, and left our business entirely unnursed for, for a period of two months.

In addition to that, gentlemen will recollect the price of wages in our county. A good competent miner often gets paid there six or seven dollars a day, and a respectable blacksmith or carpenter receives eight dollars a day. Now I contend that the labor of a law-maker is equal in value, at least, to that of a mechanic, and therefore he should receive as much pay for his labor. We meet here at an early hour in the morning, and remain in session until nine or ten o'clock at night, either in the Convention or in some of the various committees. I certainly hope we shall fix the compensation of members of the Legislature, who will have to perform similar labors, at a sum at which men can live, though I have no legislative aspirations myself.

Mr. CROSMAN. A good deal has been said here about the Legislature getting paid in cash, but how is that to be accomplished? The first Legislature will have to provide the means for obtaining the cash, and when that money comes, members will get it, but that will be a long time to wait, I apprehend.

Mr. JOHNSON. Such is my opinion also.

Mr. CROSMAN. I cannot see any good reason for putting the per diem down to six dollars. The gentleman from Ormsby, (Mr. Johnson), urged the importance of paying the State officers, each, a salary of three thousand six hundred dollars a year, which amounts to a good deal more than eight dollars a day, and I maintain that a gentleman who is properly qualified to be a member of the Legislature possesses all the qualifications necessary for a State Controller, or for almost any other State officer.

Mr. JOHNSON. I very much question your proposition.

Mr. CROSMAN. Hence, I cannot see the propriety of reducing the pay of members of the Legislature to a figure that will no more than cover their expenses. If we expect to get men to serve for no more reward than the honor of it, then why not adopt the same policy in regard to the State officers? I was of opinion at first that six dollars would be enough to pay expenses, but gentlemen from the remote districts will require more, even for that. The honor may be well enough, but it will not pay traveling expenses nor board bills. Those whose homes are near the capital can go out and come in whenever they please, but members from the remote districts cannot have that privilege except at greater expense.

Mr. STUYVESANT. My calculation is, that we ought to give each member enough to pay his expenses—and his board bill alone will amount to about forty dollars a week, if he brings his wife with him—and then leave him a little something over for contingencies. I want the members to be paid enough, so that they can come out even at the end, if they are prudent, and that will require as much as eight dollars a day.

Mr. WETHERILL. Members' wives do not constitute necessary appendages to legislation, and consequently it is not requisite that a member should bring his wife with him, if he has one.

Mr. NOURSE. It is cheaper. [Laughter.]

Mr. WETHERILL. I hope we shall not raise the per diem above six dollars. The benefit to accrue would not be equal to the increased amount of expense, which the State would have to pay. If we want to go on with our State Government under an economical system, for heaven's sake do not let us begin by increasing the legislative per diem to eight dollars.

Mr. FRIZELL. If I thought the compensation of Senators and Representatives would be paid in cash I should vote for six dollars, but inasmuch as there are doubts and shadows resting upon that question I think I will vote for eight dollars. The increase of expense would be, going upon the supposition that there are to be fifty-two members of the Legislature, one hundred and four dollars multiplied by sixty, which makes six thousand two hundred and forty dollars. That is not a very alarming amount.

Mr. WETHERILL. But the session is to continue ninety days.

Mr. FRIZELL. That is only the first session. As to the argument of the gentleman from Ormsby, (Mr. Johnson), in most cases, there is no man whose leadership I would be more willing to follow.

Mr. JOHNSON. I am fearful that the gentleman would not regard me as being sound on some important questions.

Mr. FRIZELL. I say there is no man I would generally prefer to follow, but I must say, judging of his views from private conversations, that I really do not think I should be doing right to follow him in this instance, because I understand he is rather down on legislators. I shall vote for eight dollars. ("Question, question.")

Mr. JOHNSON. I desire that this amendment shall be made to harmonize with some of the election stories we have heard, in past years, and therefore I move that we make it read "eight dollars a day and root hog."

[Laughter.]

Mr. MURDOCK. I see that the Committee is getting impatient, but I will not speak five minutes on this subject. I was one of the Committee that recommended the filling of the

think with six dollars a day, and I agreed to that, like my friend from Greenbrier (Mr. Johnson), with reluctance.

Mr. JOHNSON. In the Committee I was in favor of making it five dollars a day.

Mr. MURDOCK. That is correct; but as a compromise we agreed to take six dollars. I was also opposed to paying six dollars a day, but perhaps for somewhat different reasons. I know very well that situated as we are in the far off counties, we have no lawyers thirsting for honors, whom we could send to the Legislature cheap, and be glad, may be, to get them out of the way—[merriment]—and so we shall have to take the best men we have got, and they will be mechanics who are worth eight dollars a day. Now since we must select those men whom we think to be worthy, having no lawyers to send for the honor of it, I believe we should pay them such wages as they themselves think they are worthy of, and are able to earn every day at home. Consequently I shall vote for eight dollars.

The question was taken on the amendment to strike out the word "six" and insert "eight," and upon a division the vote was—ayes, 14; noes, 6. So the amendment was agreed to.

Mr. JOHNSON. Did the Chair rule roast beef out of order?

The CHAIRMAN. The Chair did.

Mr. JOHNSON. I did not hear it or I would surely have appealed. [Merriment.]

Mr. PROCTOR. Now I move the adoption of the section as it stands.

The CHAIRMAN. That is the question before the Committee.

Mr. BROSNAN. I have an amendment to offer to the clause relating to mileage. It is to insert after the word "going" the word "to," and after the word "returning" to insert "from the place of holding the session." Then the clause will read:

"And forty cents per mile for mileage, going to and returning from the place of holding the session."

Mr. JOHNSON. I think it is important to this, that it does not provide specifically for paying the members elected at the first session. The general frame work of our Constitution contemplates, as provided in the article on the Legislative Department, that the compensation of members of the Legislature shall be established by law, and this is intended, therefore, to apply only to the first Legislature.

Mr. BROSNAN. That is provided for in the previous part of the section. I will modify my amendment, however, so that the clause will read:

"And forty cents per mile for mileage, going to and returning from the place of meeting."

The question was taken and the amendment was agreed to.

FEES AND PERQUISITES.

The SECRETARY read the next, and concluding clause of the section, as follows:

"No officer mentioned in this section shall receive any fees or perquisites to his own use for the performance of any duty connected with his office, or for the performance of any additional duty imposed upon him by law."

Mr. HOVEY. I think that will cut off the allowance of sixty dollars to each member for stationery, and so forth, provided for in the article on Legislative Department.

The question was taken on the adoption of the clause as read, and it was agreed to.

The question was then taken on the adoption of the entire section as amended, and it was adopted.

Mr. CHAPIN. I move that the committee rise, and report Article XI back to the Convention, and recommend its passage as amended by the Committee of the Whole.

The question was taken, and the motion was agreed to.

IN CONVENTION—SALARIES.

The PRESIDENT having resumed the Chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article XI, entitled Salaries and Appropriations, had made some amendments thereto, in which he was instructed to ask the concurrence of the Convention, and recommended the passage of the article with such amendments.

The report was accepted, and the Committee of the Whole discharged from the further consideration of the article.

Mr. WARWICK. I move the adoption of the report.

The PRESIDENT. The question is on agreeing to the several amendments reported by the committee.

CONTINGENT EXPENSES OF THE LEGISLATURE.

Mr. CHAPIN. I would like to inquire whether the last clause of the section really does cut off the sixty dollars allowed to each member of the Legislature for certain contingent expenses? It occurs to me that it will have that effect, and yet I am sure that cannot be the intention.

The PRESIDENT. I heard the same inquiry made, I believe, in the Committee of the Whole. I do not think that would be the effect.

Mr. GIBSON. They are to receive two dollars a day extra, if we adopt the amendment raising the per diem from six to eight dollars. That will give them one hundred and eighty dollars for the session, instead of the sixty.

Mr. BROSNAN. I so understand it. I am disposed to think that section 33 of Article IV, as already passed, is so worded as to provide for the allowance of sixty dollars to each member.

The PRESIDENT. The question will be on agreeing to the several amendments reported, and whenever that portion of the report is reached, it will be competent for gentlemen to offer such amendments as they may deem necessary.

PAY OF THE LEGISLATURE.

The question was stated on the amendment proposed by the Committee of the Whole, to strike out, in the clause relative to the per diem of members of the Legislature, the word "six," and insert "eight," so that the clause would read as follows:

"The pay of State Senators and members of the Assembly shall be eight dollars per day for each day of actual service," etc.

Mr. BANKS. I call for the yeas and nays on that proposition.

The question was taken by yeas and nays, and the vote was—yeas, 17; nays, 7—as follows:

Yeas—Messrs. Banks, Chapin, Collins, Crawford, Crosman, Dunne, Frisell, Hawley, Hovey, Lockwood, Mason, Murdock, Nourse, Proctor, Sturtevant, Tagliabue, and Warwick—17.

Nays—Messrs. Belden, Brady, Brosnan, Gibson, Kennedy, Wetherill, and Mr. President—7.

So the amendment was agreed to.

The next amendment was to insert the word "to," and add the words "from the place of meeting," to the clause relating to mileage, so as to read:

"And forty cents per mile for mileage, going to and returning from the place of meeting."

The question was taken, and the amendment was agreed to.

THE TREASURY FUNDS.

Mr. GIBSON. There is still another amendment, to insert the words "out of the State Treasury."

Mr. HAWLEY. I wish to propose an amendment to the effect that the payments of the salaries of the officers mentioned shall be made out of the general fund of the State Treasury. Everybody knows, who is familiar with the history of California, that great abuses have been practiced there by borrowing money from different funds. The idea has occurred to my mind at this moment, and I hope the matter will be put into practical shape by some member who is more familiar with the requirements of the various funds than I am.

The PRESIDENT. It is competent for the Legislature to regulate the several funds. The Legislature can indicate what shall be the general fund, and although such a fund may be created, yet there may be no money in it.

Mr. HAWLEY. My experience in those matters is not so extensive as that of our President. It occurred to me that it would be prudent to make some restriction on the subject, but I will not offer an amendment.

The amendment to insert the words "out of the State Treasury," was agreed to.

Mr. HOVEY. There is another amendment, which appears to have been overlooked, which is to strike out the words "not exceed" wherever they occur in the section, and insert the word "be."

The question was taken on the amendment referred to by Mr. Hovey, and it was agreed to.

Mr. KENNEDY. If there are no further amendments, I move that the section as amended be adopted.

The question was taken, and the section as amended was adopted.

The article was then ordered to be engrossed for a third reading.

MISCELLANEOUS PROVISIONS.

Mr. CHAPIN. I move that the Convention resolve itself into Committee of the Whole for the consideration of Article XVI, entitled Miscellaneous Provisions.

Mr. CROSMAN. I will move as an amendment that the Convention go into Committee of the Whole on the general file.

Mr. CHAPIN. I accept that.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. KENNEDY in the chair,) and proceeded to the consideration first, of Article XVI, entitled Miscellaneous Provisions.

SEAT OF GOVERNMENT.

The SECRETARY read Section 1, of Article XVI, as follows:

SECTION 1. The seat of government shall be at Carson City, but no appropriation for the erection or purchase of capitol buildings shall be made during the next three years.

Mr. WARWICK. I move to amend the section by striking out the words "at Carson City," and inserting instead the words "wherever the Legislature may prescribe." I offer the amendment for this reason: It is well known that at the present time the capital is situated on the extreme western border of the Territory, and that the business and population is steadily going over on the other side. That condition of things may be more marked in the future, and therefore we ought, in my opinion, to leave the location of the capital in the hands of the Legislature.

Mr. JOHNSON. I feel some delicacy in speaking on this question, but if there is any impropriety in my doing so, it was no less improper for the gentleman from Lander to offer this exceedingly modest amendment. Therefore, we may consider his action a fair off-set.

Now, sir, it has been mentioned to me, by gentlemen who are here as the representatives of counties other than Ormsby, that they do not want this matter left in such a condition as to place the State Capital upon wheels, and let it go traveling around from one place to another. Why, sir, according to the programme the gentleman marks out, the Legislature may, the very next year, remove the capital from this city, and establish it at the extreme eastern portion of the State.

Mr. WARWICK. Yes; if that should be a proper place for it.

Mr. JOHNSON. No doubt it would be, according to the gentleman's extreme opinions of

the future grandeur and prosperity of his section. If we concede the correctness of his calculations and valuations in regard to the future population, wealth and business of that remote part of the Territory, no doubt it is the proper place for the capital. But it is enough to know that under such a system there would be no stability or permanence. The capital is now located here, and conceded to be properly situated, for the present, at least, and we may judge from the experience of other States, as to the propriety or wisdom of permanently fixing the State Capital.

What has been the history of California in this respect? I had occasion in committee, when, I believe, the gentleman from Lander was present, to recount some of the incidents of the various removals of the capital of that State. Year after year the seat of government was changed, greatly to the perplexity and bewilderment of the people. First it was at San José, then it went to Vallejo, then to Benicia, from Benicia to Sacramento, from Sacramento to Benicia, and then back again—once in the intervening time, however, finding its way back to San José; and thus, for a series of years, the Legislature and the people of that State were agitated with the all-important question, not alone of where the capital should be, but where it really was. Committees were appointed on the subject, and the matter was discussed year after year, in and out of the halls of the Legislature, and courts of justice, before the question was finally determined, not only of where the capital ought to be, but where it was, according to law. And we can anticipate nothing different to result in our State, if we adopt the proposition of the gentleman from Lander. I think he came to California at a later date than the time when the events I mention transpired, but I assure him that if we should arrange this matter in the way he proposes, the same state of things in our State would be the inevitable effect.

Sir, if gentlemen do not believe that the capital belongs here, if they do not think this is the proper place for it, then I say locate it somewhere else; but wherever you do place it, fix it there immovably. Let the capital be located and established permanently somewhere. If you submit this question to the Legislature, you set that body, at each and every session, to the work of receiving bids for the removal of the capital to one locality or another, and I do not want such an infliction imposed upon it, or upon the State. Your cheap-priced legislators would then require to be boarded throughout the session, and you would give them an opportunity to enforce their demands by holding out threats of voting for the removal of the capital. I repeat, if you do not think this is the proper place for the capital, fix it somewhere else; but whatever place you determine upon, establish it there permanently. This State is not situated, however, like New York or Massachusetts, yet in neither of those States has it been deemed necessary to locate the capital geographically in the centre of the State.

Mr. BANKS. As they say in mining phraseology, we have here strong "indications" of a capital fight—"clear and well defined." In view of all those "indications," I should like to ask leave of absence for about one week. But seriously, I hope we may be allowed to take a vote on this question, and put an end to a discussion, which surely can accomplish no good purpose.

Mr. WARWICK. I only wish to say, in reply to the gentleman from Ormsby, (Mr. Johnson), that it is universally conceded that the capital of a State ought to be located not on its borders, but as near the centre as is practicable. In regard to the State of New York, to which he has referred, the capital is at Albany, which, although not the centre, is as near to it as it can conveniently be located. It is not at New York City, by a long ways. Now I only ask to leave this matter to the Legislature, so that, if at some future time there shall be good reason for locating the capital elsewhere, it may be done. It might be many years before any change would be desirable.

I will modify my amendment so that the Section will read:

"The seat of government shall be determined by the Legislature, but no appropriation," etc.

The question was taken on the amendment as modified, and it was not agreed to.

The question was then taken on the adoption of the section as read, and it was adopted.

OATH OF OFFICE—DUELING.

Section 3 was read, as follows:

Sec. 3. Members of the Legislature, and all officers, Executive, Judicial, and Ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation:

"I ——, do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State, Convention or Legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear (or affirm) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge, or acceptance, since the adoption of the Constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel, during my continuance in office. And further, that I will well and faithfully perform all the duties of the office of —— on which I am about to enter, so help me God."

Mr. BROSNAN. I call for a division of the question on this section. I want a separate vote upon that portion of the section which reads as follows:

"And I do further solemnly swear (or affirm) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor

in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge, or acceptance, since the adoption of the Constitution of the State of Nevada, and that I will not hereafter be engaged or concerned, directly or indirectly, in or about any such duel, during my continuance in office."

The question was stated on the adoption of the first portion of the section, preceding the above clause, relative to dueling.

Mr. NOURSE. I believe this form of language is in the oath prescribed by Congress, but I confess that I have never been able to understand it. Where it says—"And further, that I do this with a full determination, pledge and purpose," and so on, what does it mean?

Mr. STURTEVANT. That he is going to do his duty.

Mr. NOURSE. Why not say so, then?

Mr. COLLINS. This has rather taken me by surprise. I certainly object to striking out this portion of the oath in reference to dueling.

Mr. JOHNSON. That is not the question. There is no motion to strike out, but a division of the question having been called for, and a separate vote on the clause in regard to dueling, the question is, according to my understanding, on the adoption of the residue of the section.

Mr. COLLINS. I hope that part of the section will not be stricken out, nor omitted, upon any consideration.

Mr. JOHNSON. Then the gentleman should vote "aye" on both propositions.

The question was taken upon the adoption of all the section except the clause designated by Mr. Brosnan, and it was adopted.

The question was then taken upon the excepted clause, and it was also adopted.

The question was next taken upon the adoption of the section as a whole, and it was adopted.

INELIGIBILITY TO OFFICE.

Section 3 was read, as follows:

Sec. 3. No person shall be eligible to any office who is not a qualified elector, or who has fought or been in any manner concerned in a duel since the adoption of this Constitution.

No amendment being proposed, the section was adopted as read.

TIME OF GENERAL ELECTION.

Section 4 was read, as follows:

Sec. 4. The general election shall be held on the Tuesday next after the first Monday of November.

No amendment was offered, and the section was adopted as read.

LIMITATION OF THE LEGISLATURE.

Section 5 was read, as follows:

Sec. 5. The aggregate number of members of both branches of the Legislature shall never exceed seventy-five.

No amendment being offered, the section was adopted as read.

TERM OF STATE OFFICERS.

Section 6 was read, as follows:

Sec. 6. The term of State officers elected at the first election under this Constitution, shall continue until the Tuesday after the first Monday of January, A. D. 1867, and until the election and qualification of their successors.

Mr. BROSNAN. I propose an amendment in that section. I move to insert after the word "Constitution," the words "and all officers whose offices may hereafter be created."

Mr. PROCTOR. I think there is a conflict here; I do not know but I may be mistaken. I understand that it is proposed to retain the Territorial officers in the several counties.

Mr. JOHNSON. This simply relates to the term of State officers. But I will inquire of the gentleman from Storey, (Mr. Brosnan,) whether the proposed amendment will not include as well the judges of the Supreme Court? If so, I think it would be in conflict with the programme of the Judiciary Committee. If we say "the term of the State officers, and all other officers hereafter provided for," shall continue until the time specified, it seems to me that the judges of the Supreme Court would be included.

Mr. BROSNAN. My object is to provide that in case the Legislature shall create new offices, the incumbents shall take office at the same time as those provided for by the Constitution. I am not particular about the language, however, and the section may need some further amendment.

Mr. JOHNSON. My impression is, that the use of the words "all officers" would most certainly include judicial officers, and I will suggest that it would be better to say "all State officers, judicial officers excepted." Because in the judicial feature, we propose whether we shall have three Supreme Court Judges, or five, to make provision for their classification by lot, so that they may hold office respectively, for two, four and six years, or if we shall decide to have the larger number of five, they may be so classified as to hold for two, three, four, five and six years respectively, one only vacating office each succeeding year.

Mr. BROSNAN. I think it will be well to make such an amendment as the gentleman from Ormsby suggests. I will not press the amendment which I have proposed, but instead, will offer an amendment to insert after "State officers," the words "except judicial."

The question was taken on the amendment last proposed by Mr. Brosnan, and it was agreed to.

Mr. CHAPIN. The section now seems to conflict with another which we have heretofore amended and adopted, fixing the term of office of the Governor at four years. This section would limit it to two years.

Mr. JOHNSON. The general framework of the Constitution provides for a term of four years; but the term of two years for the officers first elected is an exception to that general rule, and properly should be placed in the Schedule or Miscellaneous Provisions.

Mr. NOURSE. It seems to me that this whole section should go into the Schedule. Miscel-

laneous subjects, which do not properly come within the scope of the other articles, should be inserted in this article, but merely temporary matters, which have reference to the change from the Territorial condition to that of a State, and are not intended to be permanent features of the instrument, should have their place in the Schedule. That, it appears to me, ought to be the distinction between this article and the Schedule. I move to strike this section out, with a view of having it inserted in the Schedule.

Mr. COLLINS. I suggest that the motion should be to refer it to the Committee on Schedule.

Mr. NOURSE. Very well.

Mr. JOHNSON. I do not think that is necessary. We can pass upon it, and, if desirable, can transfer it to the Schedule Department afterwards.

The question was taken on Mr. Nourse's motion as modified, and it was agreed to.

Mr. JOHNSON. I do not understand that the vote just taken operates as a transfer of the section. If so, there is no need of having another vote.

Mr. CHAPIN. It answers our purpose; we have not yet considered the Schedule, and we can adopt the section in that.

Mr. NOURSE. What possible objection is there to striking the section out of this article now? The Schedule has not yet come before us.

Mr. JOHNSON. I will explain to the gentleman how a question may arise, under the rules of parliamentary proceedings. Possibly, this vote, not being the action of the Convention, is a nullity; but supposing the action of the Convention, as understood, is merely striking out the section? This day is Friday, and the afternoon, and to-morrow night we may finally adjourn. In the meantime, under parliamentary rules, we could not reach the section by reconsideration before the adjournment of the Convention, and if it is called up to-morrow, objections may be urged that it cannot be reconsidered on the same day, the Convention having once rejected it. Thus, if you strike out the section, the objection of an individual member might, if so disposed, defeat its re-incorporation.

Mr. NOURSE. What motion, then, does the gentleman want?

Mr. JOHNSON. Only this: that our action should not be to reject, or absolutely strike it out, but rather to place it in such condition as to be under the control of the Convention for future action, whether that be to adopt or reject it.

Mr. CHAPIN. The Committee on Schedule has not yet made its report to the Convention. The members of that committee are all here, and doubtless understand the intention of this body in regard to the section; and I have no doubt that they will see the propriety of incorporating it in the Schedule, when they make their report.

Mr. NOURSE. Very well; I will make the motion that we recommend the Convention to refer the section to the Committee on Schedule.

The question was taken, and the motion was agreed to.

Mr. NOURSE. Now does not that leave the section in the position of not having been acted upon, but merely referred? It seems to me that it need not embarrass us about the adoption of the article.

The CHAIRMAN. The Chair is not sufficiently acquainted with parliamentary rules to be enabled to inform the gentleman.

OFFICERS OF COUNTY OFFICERS.

Section 7 was read, as follows:

SEC. 7. All county officers shall hold their offices at the county seats of their respective counties.

Mr. STURTEVANT. I move that we adopt the section.

Mr. BANKS. I would like to hear the reasons for the change made by the Committee on Schedule.

Mr. DUNNE. The amendment which the Convention has made changes entirely the language of that section. The original section, as it stands in our printed basis, reads as follows:

SEC. 7. The Sheriffs, County Clerks, County Treasurers, County Judges, and County Recorders, shall hold their offices at the county seats of their respective counties.

The committee have amended that by striking out the officers named, and inserting instead the words "all county officers." I dissent from that action of the committee, and therefore I move as an amendment to strike out the words "all county officers," and insert instead the words contained in the printed section, so as to leave the section as it stood originally.

The question was taken on the amendment, and, it appearing to be lost, a division was called for.

Mr. DUNNE. I supposed that amendment would be adopted without any trouble, for I think the section includes enough of the county officers, as it is in the original; enough, at all events, to be included in a constitutional provision. It will often occur, in a great many counties, that it will be found almost impossible to get a good County Surveyor to consent to leave his place of residence and go to the county seat—and there is really no necessity for it. If anybody has business with him, he can go to his office and find him; and the man who gets the office of County Surveyor will not be apt to be one who has his office located away off in some remote cañon, but rather one whose place of business is in a populous town. It will probably very often happen that the county seat is not the most populous town in the county—it is not in my own county—and the man who would perhaps be the best County Surveyor, would not accept the office upon such a condition. There is nothing connected with the office which makes it at all necessary that it should be located at the county seat, and it is not going to make it any easier for

the majority of those who have business with the Surveyor, and have to go to his office. It will be quite as convenient for them, if he resides at some other town, perhaps the largest in the county. If parties have a survey made, they must file the map, not in the Surveyor's, but in the County Recorder's office. It seems to me that we might, with equal propriety, adopt a provision that every lawyer shall reside at the county seat.

Mr. WARWICK. We do require a lawyer to reside there, if he is County Judge.

Mr. DUNNE. I see no necessity for requiring such an officer to reside at the county seat, and I think we might better leave it to the Legislature, even in regard to these other officers. Certainly those not specified in the original section should not be required to live at the county seat, and the power might be lodged with the Legislature to prescribe such residence hereafter, at any time when it may be deemed necessary. For the present—at least in the new counties and those which are about to be created—there is no necessity for it, and I would leave it to the Legislature to make such provision after a time, if it shall be found requisite.

Mr. WARWICK. It is very evident to my mind, that of all the officers which the gentleman has enumerated, there is no one whose residence at the county seat is more absolutely necessary than that of the County Surveyor. And why? New locations of lands are being made all the time, and we will suppose a case where two individuals, claiming to have located the same piece of land, wish to get it surveyed. The rule is, that whoever reaches the County Surveyor first, will have his survey made first. One of them may happen to know that Mr. Green, the County Surveyor, lives in Cow Canon, but the other is not so fortunate as to be aware of that important fact, and so loses his chance. But if the Surveyor is required to keep his office at the county seat, they both know exactly where to find him, and no unfair advantage can be taken. It is the proper place for him, and consequently, I think it is absolutely necessary that he should be required to reside there.

Mr. PROCTOR. It seems to me that the section, as reported, would include County Commissioners, too.

Mr. DUNNE. Certainly.

Mr. PROCTOR. If it requires them to reside at the county seat, I certainly object. The Public Administrator and Coroner would also be included.

Mr. TAGLIABUE. It simply says that they shall hold their offices there; not that they shall reside there. And as to the County Surveyor in Humboldt County, he certainly does not attend to his business, and do his duty properly, if he does not keep his office at the county seat, for the law of the last session of the Legislature requires county officers to keep their offices at the county seats.

The question was taken on the amendment offered by Mr. Dunne, and upon a division the vote was—ayes, 9; noes, 11. So the amendment was not agreed to.

Mr. CHAPIN. I will suggest an amendment to except County Commissioners.

Mr. WARWICK. They must hold their offices there.

Mr. CHAPIN. Well; all right.

Mr. LOCKWOOD. I do insist that the Coroner should not be compelled to reside at the county seat. I am very sure there is not pay enough connected with that position, in some counties, to justify a Coroner in going to the expense of opening an office.

Mr. DUNNE. I move to amend by excepting County Surveyors. Now, see how it would work. You compel a man to put out his sign—"County Surveyor"—at the county seat, and then he may reside at a different place.

Mr. BANKS. I hope this amendment will be adopted. I do not think there are many counties in this Territory in which a great number of competent surveyors are to be found, and it is exceedingly desirable that the most competent men should be selected for that office. But with the section in its present form, we shall have but a very slim chance of securing the best talent for the position. When a County Surveyor is elected, it becomes known at once, all over the county, where his place of business is, and how it is reached, and the difficulty alleged by the gentleman from Lander (Mr. Warwick,) in the case supposed by him a few moments ago, is one which it is not at all probable will ever exist. The place of residence and office of the County Surveyor are likely to be as well known under this amendment as if he held his office at the county seat; and I do not think there would be any greater difficulty in regard to the races the gentleman refers to, in cases of rival locations of land, if we adopt the amendment, than there will be if we leave the section to stand as it is. I know that in our own county the requirement would operate very badly indeed.

The question was taken on the amendment offered by Mr. Dunne, and it was not agreed to.

The question was then taken on the adoption of the section as read, and it was adopted.

PUBLICATION OF LAWS AND DECISIONS.

Section 8 was read, as follows:

SEC. 8. The Legislature shall provide for the speedy publication of all statute laws of a general nature, and for such judicial decisions as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person; *provided*, that no judgment of the Supreme Court shall take effect and be operative until the opinion of the Court in such case shall be filed with the Clerk of said Court.

Mr. NOURSE. In looking over this section I find one thing about it to which I desire to call attention. It is customary, I believe, that the Reporter of the Supreme Court shall be allowed to have the copyright of the judicial decisions which he reports, and that constitutes

the main portion of his compensation. It would seem that under this section he can enjoy no such privilege.

Mr. JOHNSON. I think this is one of the most commendable features of the section, and the gentleman from Washoe will no doubt excuse me if I have to refer to California for an illustration, and trench somewhat on the Supreme Court of that State. [Merriment.] In California, as the gentleman is advised almost daily, in the columns of the Sacramento *Union*, the decisions of the Supreme Court are published. Within a day or two after a decision is rendered, it appears in that journal, and very often there is an entire page or more, containing the Supreme Court decisions. This section is designed to protect and guard the right of publishing the Supreme Court decisions of our State, in the same manner; for the privilege may be enjoyed by any enterprising newspaper, that may be inclined to publish these decisions. One object should be to diffuse among our people, as speedily as possible, an understanding of the decisions of our courts, and this section is intended to accomplish that end in our State. Why, sir, we have now but the twenty-second volume of the California Reports. It is published in very good time, it is true, yet we have had all the decisions it contains six or eight months ago in the columns of the Sacramento *Union*, without which we would have been entirely ignorant of what those decisions were, for months after they were pronounced by that court.

Mr. NOURSE. I guess the section is all right in that respect.

Mr. BROSNAN. I move to amend by striking out the words "judicial decisions," in the third line, and inserting instead the words "decisions of the Supreme Court;" so that the section will read:

"The Legislature shall provide for the speedy publication of all statute laws of a general nature, and for such decisions of the Supreme Court as it may deem expedient," etc.

I offer this amendment because a judicial decision may be merely a decision of a Justice of the Peace, and it would hardly be worth while to provide for the publication of the decisions of those officers.

The question was taken, and the amendment was agreed to.

The question was then taken on the adoption of the section as amended, and it was adopted.

CHANGE OF SALARIES.

Section 9 was read, as follows:

SEC. 9. The Legislature may at any time provide by law for increasing or diminishing the salaries or compensation of any of the officers whose salaries or compensation is fixed in this Constitution; *provided*, no such change of salary or compensation shall apply to any officer during the term for which he may have been elected.

No amendment being offered, the section as read was adopted.

OFFICERS NOT SPECIFIED.

Section 10 was read, as follows:

SEC. 10. All officers whose election or appointment is not otherwise provided for, shall be chosen or appointed as may be prescribed by law.

No amendment was offered, and the section was adopted as read.

TENURE OF OFFICE.

Section 11 was read, as follows:

SEC. 11. The tenure of any office not herein provided for may be declared by law, or when not so declared, such office shall be held during the pleasure of the authority making the appointment; but the Legislature shall not create any office, the tenure of which shall be longer than four years.

Mr. WARWICK. I desire to ask if that will conflict with the terms of the Supreme Court Judges, according to the Judicial article?

Mr. NOURSE. No, sir. That office is not created by the Legislature.

No amendment being proposed, the section as read was adopted.

OFFICERS OF STATE OFFICERS.

Section 12 was read, as follows:

SEC. 12. The Governor, Secretary of State, State Treasurer, State Controller, and Clerk of the Supreme Court, shall keep their respective offices at the seat of Government.

Mr. JOHNSON. I propose to offer an amendment to this section, striking out the words "State Controller," and inserting instead "Auditor of State," so as to change the official designation of that officer. And in offering this amendment I am only foreshadowing the report of the Schedule Committee, wherein we have determined to provide for making this officer the Auditor, for reasons which I submitted to the committee last evening, and which I will now briefly recapitulate. In the first place, this officer is intended to succeed to and supersede the Auditor of the Territory, and we have numerous laws within our statutes which define and prescribe the duties of the Auditor of the Territory. Again, by the provisions of some sections of the Schedule—I do not know that they have as yet been reported, but they have been agreed upon by the committee—it is proposed that these State officers shall enter upon the discharge of their duties on the first Monday in December. It is also proposed that the Legislature shall not convene until after that day, and consequently considerable further time must elapse before any change can be made in the laws on this or any other matter. In order, therefore, to conform to the laws as we now find them, I desire a change made in the name of the officer. Unless this is done, he can not be governed by the laws now in force, nor in fact by any laws, until the Legislature shall have had an opportunity to change the name by which this officer is to be known.

It is quite immaterial what the official designation may be. In California we have been familiar with that of Controller, but in other

States the officer charged with similar duties is called the Auditor, and the only difference it makes here is, that the laws we already have, designate the officer as Auditor. In most of the older States, I believe, we find the same officer designated as Auditor, or Auditor of Public Accounts. In Michigan he is called the Auditor-General, while in New York he is styled the Controller, and the same possibly in other States.

Mr. WARWICK. In Massachusetts, also.

Mr. JOHNSON. It may be; I do not recollect the facts. But in a majority of the States he is designated as the Auditor. I say it makes no difference what we shall designate this officer, except so far as it may be desirable to conform to the Territorial laws, at least until such time as the State Legislature may change them. As I have stated, it is proposed that all the State officers named shall enter upon their duties on the first Monday in December, whilst the Legislature does not convene till the second Monday in December, and no changes in the law could be effected until some time after the day last named. But the change I have proposed in the name might supersede the necessity of corresponding changes in the laws of the Territory. For these reasons I hope that the amendment will be adopted, so that the officer may be designated as "Auditor of State," instead of "State Controller."

Mr. BROSNAN. I believe the word "Controller" has been used in several sections already passed and enrolled; and if we make the change here, we shall also have to reconsider and amend those sections.

Mr. JOHNSON. There is no doubt of that. But the question is whether it will be less difficult for us to make the corresponding changes, admitting that we have in this respect to undo our former work and make changes wherever the word occurs in the Constitution, than it would be for the Legislature to alter the laws. The objections mentioned by the gentleman from Storey occur on the one hand, whilst on the other, it seems to me, there are greater difficulties to be surmounted. There is no single law defining the duties of the Auditor, else the case might be different, but there are references to an officer, by such name, pervading the entire body of our statutory law.

Mr. HOVEY. Cannot we provide in the Schedule that all the Territorial laws relating to the Auditor shall apply to the State Controller, so far as practicable?

Mr. JOHNSON. Possibly the gentleman from Storey might be able to frame a section which would meet the case.

Mr. BROSNAN. We ought to avoid erasures if possible, and it seems to me hardly worth while to make all these amendments merely for the sake of changing the name of the office. It is said a rose would smell as sweet by any other name.

Mr. JOHNSON. Especially if you spell rose—R-o-s-s. [Laughter.]

Mr. BROSNAN. No, sir; I spell it r-o-s-e. We can obviate all difficulty by saying in the Schedule that the duties of the Controller shall be as prescribed by law for the Territorial Auditor, until other laws shall be passed by the State Legislature.

The question was taken on the amendment offered by Mr. Johnson, and it was not agreed to.

The question was then taken on the adoption of the section, as read, and it was adopted.

STATE CENSUS.

Section 13 was read, as follows:

SEC. 13. The enumeration of the inhabitants of this State shall be taken under the direction of the Legislature in the year 1868, and 1867, and 1875, and every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States in the year 1870, and every subsequent ten years, shall serve as the basis of representation in both Houses of the Legislature.

Mr. DUNNE. As it is generally believed that Congress intends providing that the United States census shall be taken every five years, I move to amend this section, first by striking out the word "shall," in the second line, and inserting "may;" and secondly, by adding after the word "Legislature," in the third line, the words "if deemed necessary." Unless this amendment is adopted, the State will be obliged to incur the expense of taking the census, when there may be no necessity for it.

Mr. NOURSE. We do not need to strike out the word "shall." Let it read, "Shall be taken under the direction of the Legislature if deemed necessary." That is all that is required.

Mr. DUNNE. Very well. There is no question, however, but that the Legislature will do it, if it is necessary, because every county will be anxious to secure the amount of representation to which it may be entitled.

The question was taken on the amendment offered by Mr. Dunne, and it was agreed to.

The question was then taken on the adoption of the section as amended, and it was adopted.

ELECTION BY PLURALITY.

Section 14 was read, as follows:

SEC. 14. A plurality of votes given at an election by the people, shall constitute a choice, where not otherwise provided by this Constitution.

No amendment being offered, the section as read was adopted.

Mr. WARWICK. Now I move that the Committee rise, report the article back with the amendments, and recommend its passage.

COMPENSATION.

Mr. BANKS. I would inquire of some gentleman more familiar with the subject than I am, whether Section 9, as adopted, does not conflict with some of the provisions of the article on the Judiciary?

Mr. JOHNSON. The gentleman will observe by the reading that it does not. It has been

changed somewhat from the printed form, and one of the amendments is striking out the words "except judicial."

Section 9 was read, as adopted, for information.

The question was taken on the motion of Mr. Warwick, that the Committee rise and report the article, with the amendments, and it was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article XVI., entitled "Miscellaneous Provisions," had made some amendments thereto, in which he was instructed to ask the concurrence of the Convention, and recommended the passage of the article with such amendments.

The report was accepted, and the Committee of the Whole discharged from the further consideration of the article.

Mr. DUNNE. Now I move the adoption of the report.

The PRESIDENT. No motion is necessary; the recommendations of the Committee are now before the Convention.

The question was taken upon the recommendation of the Committee of the Whole, to refer to the Committee on Schedule, Section 6, relating to the term of office of State officers first elected, etc., and it was referred accordingly.

The PRESIDENT. Unless a division is called for, the question will be upon the several amendments reported by the Committee of the Whole.

Mr. DUNNE. I want a division of the question.

The PRESIDENT. Very well; then the vote will be taken separately on each amendment.

PUBLICATION OF LAWS AND DECISIONS.

The question was taken on agreeing to the amendment to Section 8, striking out the words "judicial decisions," and inserting instead the words "decisions of the Supreme Court," and it was agreed to.

Mr. WARWICK. If I am not mistaken, there was an amendment in reference to the payment of salaries quarterly, which it occurs to me would include members of the Legislature. Will the Secretary state where that occurs?

The PRESIDENT. That does not occur in this article.

THE STATE CENSUS.

The question was then taken on the adoption of the amendment to Section 13, inserting after the word "Legislature," in the third line, as printed, the words "if deemed necessary," and it was agreed to.

OFFICERS OF COUNTY OFFICERS.

Mr. DUNNE. Now I move to amend Section 7 by inserting after "all county officers," the words "County Surveyors and Public Administrators excepted."

The question was taken, and the amendment was not agreed to.

SALARIES AND COMPENSATION.

Mr. BANKS. I move to amend Section 9 by adding thereto the following:

"*And provided further*, That such salaries or compensation shall not exceed the amounts fixed in Article XI of this Constitution."

The PRESIDENT. I suggest that the gentleman can accomplish the same purpose by striking out the word "increasing," in the former part of the section.

Mr. DUNNE. Then if at some time a salary should be diminished, perhaps improperly, the Legislature would be debarred from increasing it again to the original amount. A salary might be diminished, and then the Legislature might want to raise it again.

Mr. BANKS. I do not know of any country where, at any time, the salaries ought to be higher than we have fixed them here, for the first two years of our State Government. I think we have got them about at the maximum —"the top of the heap"—and I would like to prevent any future increase. I believe we ought to have fixed the salaries definitely—that it was well to fix them, at all events, for the first two years—but at the same time I think it is necessary to say, when we have fixed the salaries for the first two years, that the Legislature cannot raise them afterwards above the rate so established. Hence, I have offered this amendment.

Mr. NOURSE. I am not in favor of so restricting this matter of salaries, because I do not know what prices will be in the future. To be sure, as the salaries are now fixed, they are, as the gentleman from Humboldt says, at the top of the heap. There are other States where the salaries are lower, but where, I am sure, at the same time, that one dime will buy more than five will here. And in those States the salaries are deemed ridiculously small, compared with the amount of compensation which professional men can earn in the practice of their professions, or mechanics at their trades, or ranchmen upon their farms. It seems to me that the salaries we have fixed upon, so far from being high, are really, compared with other States, quite low. If two thousand dollars in one of the States on the Mississippi River, or any one of the Western States, where everything a man requires to live upon is so cheap, is a just and reasonable salary, then, taking into consideration the increased cost of living in this country, ten thousand dollars would be no more than a reasonable salary here. And inasmuch as I never knew of a case where a Legislature was extravagant in the matter of the increase of salaries, I prefer, and I think it is entirely safe, to leave this matter just as it now stands.

Mr. BANKS. As an offset to what the gentleman from Washoe says he has never known, I will say that I have seen a Legislature raise salaries extravagantly high, and I am afraid

the same thing might be done in this State. I have already assigned some reasons why I think this restriction should be made, and I will say further, that if it is not adopted, we will most certainly have to meet this objection before the people—an objection which I should consider to be valid—that the Constitutional Convention has limited the salaries for two years, but, at the same time, it has taken very good care to provide the means by which the salaries may be increased at the end of that time. People will say there is no assurance of having a cheap government for over two years. Believing that there is no necessity of encountering any such objection, and believing that it is desirable to adopt such a restriction, on account of other reasons which have been presented, I hope the amendment will prevail.

Mr. CHAPIN. I hope the amendment will not be adopted; and I think the people will be gratified if we allow the matter to remain as it is, so that they, through their representatives, may use their own good sense and judgment in respect to salaries in the future. We do not know what the currency will be worth hereafter. It may be so depreciated—although we hope and believe it will not be—that at the end of three or four years, we shall find it absolutely necessary to increase the salaries. At all events, let us leave the matter open for a few years. I hope the amendment will not prevail.

The question was taken on the amendment offered by Mr. Banks, and it was not agreed to.

The article, as amended, was then ordered to be engrossed for a third reading.

THE SCHEDULE.

Mr. CHAPIN. I move that the Convention now go into Committee of the Whole on the Schedule. We can take up the ordinance, which we have printed in the newspapers, and dispose of that, and I trust that the report of the Judiciary Committee will also be published by to-morrow morning, so that we may have that before us in printed form.

Mr. DUNNE. The Committee on Schedule has not yet reported the ordinance.

The PRESIDENT. It will not be in order to go into Committee of the Whole on a subject which is not before the Convention.

Mr. DUNNE. I am going to ask for an adjournment now, and I desire to state the reason. The Committee on the Schedule is not ready to report yet, and will require two hours more, at least, to get ready. If we adjourn now the committee can have a meeting of an hour and a half, at all events, during the recess, and that will enable it to get through with a part of its work.

Mr. CHAPIN. I supposed the Schedule Committee had reported the ordinance; that was my impression.

The PRESIDENT. I will state that the Committee on the Schedule found a stumbling block in the way, to-wit: the matter of apportionment. But for that, probably it would have been able to report before this time, on all matters referred to it.

Mr. DUNNE. The committee has had three sessions, and also an extra session this afternoon, and I have been at work what time I could get writing the report. I move that the Convention now take a recess until seven o'clock.

The question was taken, and the motion was agreed to.

Accordingly, at four o'clock, P. M., the Convention took a recess until seven o'clock, P. M.

EVENING SESSION.

The Convention met at 7 o'clock, P. M., and was called to order by the President.

The Secretary reported that there was not a quorum in attendance.

CALL OF THE HOUSE.

Mr. DUNNE moved a call of the House, which motion was agreed to.

The roll was called, and the following members responded to their names: Messrs. Banks, Belden, Brady, Crosman, Dunne, Frisell, Gibson, Hawley, Hovey, Kennedy, Mason, Proctor, Startevant, Tagliabue, and Mr. President—15.

The Sergeant-at-Arms was directed to arrest and bring in the absentees.

Messrs. Collins, Wetherill, Murdock, Chapin, and Crawford, severally appeared, stated their excuses, and were allowed to take their seats.

Mr. CROSMAN. As there is now a quorum present, I move that further proceedings under the call of the House be dispensed with.

The question was taken, and the motion was agreed to.

JUDICIAL DEPARTMENT.

Mr. DUNNE. I move that the Convention go into Committee of the Whole on whatever further business we have.

The SECRETARY. The only business on the General File is the article on Judicial Department.

Mr. DUNNE. Well, I move that we go into Committee of the Whole on that article.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. BANKS in the chair,) and proceeded to the consideration of Article VI, entitled Judicial Department.

ENUMERATION OF COURTS.

The SECRETARY read Section 1, as follows:

SEC. 1. The Judicial power of this State shall be vested in a Supreme Court, District Courts, in County Courts, and in Justices of the Peace. The Legislature may also establish Courts for municipal purposes only, in incorporated cities and towns.

Mr. HOVEY. I would like to inquire of the

Committee on the Judiciary, if in their report they have provided for any County Courts?

Mr. JOHNSON. The Chairman is not here at present, but I will state that in the propositions adopted in this judicial article, it is contemplated that there shall be a County Court in one county, and that power shall be given the Legislature to create others, in such counties, and at such times, as may be deemed necessary. The exception made is in regard to Storey County.

Mr. HOVEY. If that is the object of the Committee, it is all very well, but I had intended when we came to the exception in reference to Storey County, to move to strike it out. If the intention is, however, as the gentleman has explained, I will not make the motion now.

No amendment being offered—

THE SUPREME COURT.

Section 2 was read, as follows:

SEC. 2. The Supreme Court shall consist of a Chief Justice and two Associate Justices, a majority of whom shall constitute a quorum; provided, that the Legislature, by a majority of the members elected to each branch thereof, may, at its second session, or any time thereafter, provide for the election of two additional Associate Justices, and if so increased, three shall constitute a quorum. The majority of the whole Court shall be necessary to render a decision.

Mr. JOHNSON. The Chairman of the Judiciary Committee is still absent, and I feel disinclined, whilst he is not present, to make a motion that would affect materially the provisions of the article. If the section can be read and passed over informally, I have no objection, but will reserve the right to offer hereafter a very material amendment. It was understood when the report was made, that, so far as I was concerned, I should oppose one important feature of this section.

The CHAIRMAN. It is a very important article, and as it has not been printed I will suggest that, if desirable, it can be read through consecutively, for information.

Mr. JOHNSON. Very well; let it be read through, and after that it can be taken up by sections. By that time the Chairman may have come in.

The SECRETARY read the entire article, as reported.

COURTS IN STOREY COUNTY.

Mr. HOVEY. There is one amendment which I would like to make, but I suppose it would be out of order at this time.

Mr. JOHNSON. I ask that the Secretary be allowed to proceed with the reading of the several sections in their order, and they will be open to amendment as they are read.

Mr. HOVEY. The proposition I refer to involves several sections; that is, if we adopt it there are several sections the necessity of which will be obviated. What I propose is, to strike out that part which makes Storey County an exception in regard to the Courts, leaving it in the same condition as the other counties.

The CHAIRMAN. The amendment may be moved whenever we come to any section referring to the subject.

Mr. HOVEY. But it is involved in the first section, which we have already passed.

The CHAIRMAN. We can go back and consider that section, if it shall be necessary.

Mr. CROSMAN. I suggest that the best and quickest way to arrive at a conclusion, will be for the gentleman to make his motion.

Mr. JOHNSON. Allow me to suggest, that the better way is for the Secretary to proceed in the regular order with the reading, and when the section is reached it will be in order to move any amendment the gentleman desires.

Mr. CROSMAN. It strikes me that it would be better to make a motion which would settle the matter. The gentleman himself says that one motion would reach it all.

Mr. JOHNSON. It is not in order, unless it is a specific amendment; and I raise that objection because we have not the printed article before us.

POSTPONEMENT.

Mr. CHAPIN. I am informed by one of the Reporters, that since the adjournment this afternoon he has telegraphed to Virginia, and his belief is that the article will be published in the morning papers. If that is so, I would inquire whether there is not some other business with which we can proceed, and allow this article to lie over. The printed copies would be of great service to us in the consideration of the article.

Mr. MASON. Oh, let us act upon it to-night. We want to get through, some time.

The SECRETARY. There is nothing else before the Convention now. There is one thing, however, which might perhaps be reported to-night, and that is the Ordinance introduced by the gentleman from Storey, (Mr. Collins.)

Mr. JOHNSON. I can fully appreciate the importance of this article. Without doubt it is of very great moment; perhaps more so than any other one article in the entire Constitution, and hence we ought to have it laid before us in printed shape. And for the purpose of enabling us to consider other business, I now move that the Committee rise, report progress, and ask leave to sit again. The Chairman of the Committee on Schedule will then have sufficient time to report the Ordinance. So much time and labor will necessarily be required to consider the Ordinance, whether now or in the future, and since it is already printed we can to-night more profitably employ ourselves in its consideration, than in that of any other matter.

Mr. HOVEY. I suggest that there are two members from Storey County here now, who probably will not be present to-morrow.

Mr. JOHNSON. There is one member from Storey who is not here to-night, and probably will be to-morrow. I allude to the Chairman of the Committee on the Judiciary; and with

me that consideration is quite as important as the gentleman's suggestion.

Mr. KENNEDY. I hope we shall not delay this matter unnecessarily. I would prefer to decide at once upon the adoption of one of the two opinions which were advocated in the committee. We can very soon determine the question whether we will provide for a County Court in Storey County, or not; and also the question whether we shall have three or five Supreme Court Judges. Those, I understand, are the only bones of contention. I want those matters settled, so that the article may go to the Engrossing Committee to-night. Then they can report some time to-morrow, and we can order it to enrollment, and there will be some prospect of our getting through this week. For one, I am not willing to stay here after Saturday. I will consent to stay till 12 o'clock Saturday night, but if the final adjournment is not to take place till some time next week, I am not willing to wait for it. For that reason I hope we shall go on with the judicial article to-night, if it can possibly be done. The Ordinance, I understand, is made a part of the Schedule, or a part of the report of the Committee on Schedule, and I do not think it will take half an hour to give it all the consideration required, because the committee will make but very few changes in it.

Mr. PROCTOR. I hope we will proceed this evening with the consideration of the article reported by the Judiciary Committee, and for several reasons—

Mr. DUNNE. Is the motion before the Committee debatable?

The CHAIRMAN. In the form in which it was made, the Chair thinks it is debatable.

Mr. PROCTOR. I understand that the Judiciary Committee differed on only one or two points, and it seems to me that we can dispose of those questions just as well to-night as to-morrow. Besides, the prospect of our having a fuller attendance to-morrow is exceedingly slim. I am satisfied, from what one gentleman from Storey told me, on leaving, that he will not be here to-morrow.

Mr. JOHNSON. The gentleman to whom I referred is the chairman of the committee, Mr. Brosnan. He is unwell, this evening, and therefore not able to be here, but will probably be in attendance to-morrow.

Mr. PROCTOR. He may possibly be here, but the gentleman I referred to was Mr. DeLong.

Mr. JOHNSON. This is not a matter which involves simply well defined points of difference, as to whether there shall or not be a County Court in Storey County, or whether we shall have only three Judges of the Supreme Court, or a greater number; but there are other questions to be considered, and doubtless many amendments to be proposed. From a cursory reading of the article, I discovered at least two instances where, what I should regard as very essential provisions, have been omitted, and I am not certain but there may be other omissions. When we come to examine the printed article, it may possibly disclose the fact that there are many material and important amendments necessary to be made in the several sections. Now, sir, I am willing, without having the article before me in a printed shape, either to propose or to pass upon amendments that may be really necessary.

Why, sir, the gentleman from Lyon, (Mr. Kennedy,) has already suggested to me one seeming discrepancy, in a matter which had not before come to my notice. Here it is provided that the District Courts shall have jurisdiction over the estates of deceased persons, and in a subsequent section the County Court of Storey County is invested with jurisdiction over the estates of deceased persons, and the persons and estates of minors and insane persons. I cannot discover that jurisdiction in the cases last mentioned is provided for elsewhere, and I think it is not. If I am correct in this assumption, then in all probability material alterations will be found necessary in that as well as in other respects.

Mr. KENNEDY. That very objection was brought up in the committee, and a majority of the committee held that the language of the section relating to District Courts gave jurisdiction over minors, or at all events that the courts would have that jurisdiction. Whether that conclusion was correct or not, I do not undertake to say.

Mr. JOHNSON. Well, then, I only regret that so capable a committee should have made a report based on such a fallacy as that the conferring of jurisdiction over the estates of deceased persons would give jurisdiction also over the persons and estates of minors. I do not understand it so, and hence the occasion for discussion, and possibly for amendment, arises. Why, then, did not the committee leave the provision so as to read similarly for the County Court of Storey County? Why do they leave out the special provision for jurisdiction in these cases, in one court, and not in another. I am sorry to be compelled to criticise the report of such eminent gentlemen, and especially in the absence of the chairman of the committee, although I feel confident that he would not concur in the view of this matter which seems to be presented by the report of the committee.

Mr. KENNEDY. I do not think the chairman did concur in it. I am quite certain he did not.

Mr. JOHNSON. Then it is all the more desirable that he should be present when it is considered, and that we should all have the report before us in such a shape that we can understand it. I now warn those gentlemen who are the earnest advocates of a State Government, not to take hasty action on this matter. Let them not in the last hours of our session, thus hastily pass over the most important parts of the instrument they are preparing—that portion, upon the proper construction of which,

depends the future security of our fortunes, our liberties, and our lives. I regard this article as being quite as material, and transcending in importance, any which we have considered, or can be called to deliberate upon. Let us, therefore, give it that consideration which its importance requires and merits. I hope it will be postponed until we can have an opportunity of ascertaining from the printed sections, the defects which may exist in this, or other particulars.

Mr. MURDOCK. I hope that the article will be postponed, for the reason that I look upon it as one of the most important questions before the Convention; and now that we have spent so much time upon other portions of the Constitution, I do not feel like hurrying this through, and spoiling it, either to-night or to-morrow night. I would rather stay here another week, if necessary. I think I understood, from the hasty reading of the article, enough to know that there are certain things in it to which I should object, and want to see amended; and for this reason, and because I want the Convention to act understandingly on this all-important business—the most important which we have had before us—I hope the article will be postponed until we can have printed copies of it.

Mr. HAWLEY. I am well aware that it is the very sincere desire and earnest wish of a large number of gentlemen who are members of the Convention, to be able to conclude their labors by to-morrow night, but I think I am arrogating nothing to myself in warning them that the utmost diligence will not enable them to do so. I believe that, with due diligence, by Monday evening we can close our labors, in such a way as will give them a respectable conclusion; but I think if it is determined to finally adjourn to-morrow night, the result will be that the instrument on which we have spent so much time and labor, will pass from our hands in an imperfect, unfinished condition, which would reflect discredit on this body. Therefore, I hope that the motion to postpone will prevail.

Mr. CHAPIN. Since it has been remarked that my colleague (Mr. Brosnan) will not be present this evening on account of illness, I am sure that gentlemen will not insist on proceeding with this article, the most important one before us; for that gentleman has devoted days and weeks to its consideration and preparation. He may have erred in some particulars, but I know that his mind has been most intently fixed upon the subject, and for one, I am not willing to go on with the consideration of the article until he can be present to give us the benefit of his views upon its various features. No gentleman is more ready than he to acknowledge a fault or an error, when it is pointed out, and he will be prompt to correct any error as soon as it is made known. His mind is so fully stored with this subject that I want him here to help us with his knowledge and his judgment, and I am not willing to go forward in the consideration of the article without him.

Mr. PROCTOR. He is here. [Laughter.]

[Here Mr. BROSNAN entered the chamber and took his seat.]

Mr. CHAPIN. I am sincerely anxious to get through as early as possible, but I think we can find business enough for the evening, and leave this matter until to-morrow, when we can have it before us in a printed form.

Mr. HOVEY. I am not willing to go on with the consideration of this article when four or five members from Storey County are absent on account of sickness.

Mr. FRIZELL. Have we any assurance that if we postpone this article, we shall have it in print to-morrow?

Mr. CHAPIN. I can only say that one of the gentlemen who sits at the reporters' table, tells me that he has telegraphed to his paper, and that the presumption is it will be published in the morning. I cannot vouch for it.

Mr. KENNEDY. Was it not sent to one of the papers several days ago?

Mr. CHAPIN. I am not aware; I believe it was sent to the *Union*. I am informed that it was sent to the *Enterprise* yesterday, as soon as the report was made.

Mr. DUNNE. I would like to make a remark which probably may have some influence on the decision of this motion. I think the Committee on Schedule is now prepared to furnish as much work as the Convention can comfortably get through in one or two hours.

Mr. CHAPIN. Then let us rise.

The question was taken on Mr. Johnson's motion that the committee rise and report progress, and it was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article VI, entitled Judicial Department, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

QUESTION OF POSTPONEMENT.

Mr. HAWLEY. I am about to make a motion; I do not know whether it will be received with favor or not, but in order to test the sense of the Convention, I move that Article VI, entitled Judicial Department, be made the special order for Monday morning at eleven o'clock.

Mr. KENNEDY. I move to amend by making it Monday week. You will have as many here then as you will next Monday.

Mr. COLLINS. Is that latter motion before the Convention?

The PRESIDENT. Does the gentleman make the motion seriously?

Mr. KENNEDY. Yes, sir; if the gentleman insists on his motion, I do on mine.

Mr. COLLINS. I certainly hope that the amendment will not prevail. It occurs to me that gentlemen should not, just at the close of our session, insist upon throwing this whole matter into confusion by enacting from the Convention what is really an impossibility. I am as anxious to get home to my business as any man; but when I accepted this position, I accepted it in the best of faith, and with a determination to discharge its duties to the best of my ability.

The PRESIDENT. In other words, you enlisted for the war.

Mr. COLLINS. Yes, sir; for the war. I would have been glad to get through in three or four days, if it could have been done; but with the work before us, it was impossible. It seems to me that this Convention has devoted its time and labor attentively and faithfully to its work, and done all it could do thus far, and it appears to me unjust, not only to those members who are willing to remain to the end, but to every member of the Convention, to urge this matter through in such haste that we shall be likely to leave the instrument we frame in a condition to reflect discredit upon ourselves, and possibly to bring disaster upon the State, if it shall be adopted. I think every member owes it not only to his constituency, but to himself also, to remain here until the work of the Convention is done. Let us faithfully and conscientiously discharge the duties which we have assumed.

Mr. KENNEDY. I hope my motion will not prevail, unless that of the gentleman from Douglas (Mr. Hawley's) does; and if that shall be carried, I trust that mine will be also. Then some of us, at least, who live at a distance from the capital, will have an opportunity to go home and come back again, whereas, by the motion of the gentleman from Douglas, we shall not have time for that. I think this Convention has been in session long enough. I believe we have discussed the matters before us sufficiently, and now let members present their amendments and vote upon them. I think the time for talking has gone by, and the time for voting come. I do not see the necessity or the justice of keeping members here, away from their homes and their business, for so long a time. Now, sir, I believe that if this subject is made the special order for Monday morning, or Monday afternoon at two o'clock, if that is the motion, there will not be a quorum in the city at that time, while if we go to work in earnest now, we can finish our labors by to-morrow night. We must do that, or we shall have no quorum, and will be unable to finish at all.

Mr. CHAPIN. I really hope that the gentleman from Douglas will withdraw his motion. I feel on this subject, I presume, pretty much as the gentleman from Lyon (Mr. Kennedy) does. If we can do it, let us finish to-morrow night. I do not want to leave, however, till our work is done—and I will sit here till the last motion is adopted—but I want to keep at work. Let us make no motions for postponement, and do nothing else, but stop all unnecessary debate, and take up article by article, and section by section, and vote upon them till we get through. If we can reach the end to-morrow night, all right; if not, let us stay over till Monday, and keep at our work till it is finished. I do not want to go home till we have reached the end of our labors.

Mr. HOVEY. Does the gentleman think we can finish to-morrow night?

Mr. CHAPIN. No, sir.

Mr. HOVEY. Then does he desire to work on Sunday?

Mr. CHAPIN. No, sir; I would not work on Sunday, but stay till Monday, and then keep at it till we get it all done.

Mr. HAWLEY. Towards the close of the session of last year, I was employed as Assistant Enrolling Clerk, and I saw enough then of the confusion and disorder resulting from attempts to hurry things through, to convince me that the most suicidal course this Convention could adopt would be to attempt to hurry its work to a close to-morrow night. I will modify my motion, however, so as to postpone the article until to-morrow at two o'clock, in order to obviate the objections which have been raised against postponing anything beyond Saturday night.

I will state, for the information of gentlemen, that the Enrolling Clerk has promised, and I believe he will fulfil his promise, that to-morrow morning the Enrolling Committee shall be able to report back correctly enrolled, every line which has passed into the hands of that committee up to the present time; but I wish to say further, that there are other matters of great length to be enrolled, and I believe it is an utter impossibility to have the whole instrument enrolled and presented in proper shape by to-morrow night at twelve o'clock. Therefore, I say that any plan of proceeding, based upon the hypothesis that it is possible to get through to-morrow night, can only result in confusion and disaster to the cause which gentlemen have at heart.

Mr. BANKS. I do not like the idea of making the article a special order. I would prefer to leave it so that when we get through with one thing we can go to work upon another. I will therefore move to lay the article on the table, and then we can take it up whenever we shall be in a position to give it proper consideration.

Mr. WETHERILL. I desire to say only two or three words, if the gentleman will permit me.

Mr. BANKS. I will withdraw the motion, then.

Mr. WETHERILL. A great many members are talking of going home before the work is completed, unless it can be completed within the bounds of a certain time which they specify. Now there is no one more anxious to be enabled to attend to his private business than I am, and I think my business is suffering in

consequence of my absence as much as that of any member. But, sir, having accepted the position of a delegate to this Convention, (which I did with great reluctance,) having consented to come here and help to frame a State Constitution, I regard it as being my imperative duty to remain here until that work is completed to the very end. If I were to shirk that duty, or turn aside from it to give my attention to my private business, to the detriment of this important work, for one I should ever after blush to meet those who sent me here.

The PRESIDENT. I beg the indulgence of the Convention, whilst I submit a few words on this subject. I do not believe any reproaches can justly be cast upon the members of the Convention, for want of assiduousness and diligence in their labors. Gentlemen well understand that we have met here daily at nine o'clock in the morning, and with the exception of a recess from twelve until two o'clock, and another from five till seven, have remained in session very often as late as ten or eleven o'clock at night; and I believe on one occasion, when there was said to be some rumors of seceding from the Convention, until near midnight. And aside from our labors in the body of the Convention, we have had laborious duties to perform in attendance upon the several committees, and prolonged sessions of those bodies have been incidents of repeated occurrence.

We have not yet been in session half the length of time occupied by the Convention of last year, although our labors have been quite as arduous as theirs. So far as I am concerned, it has been a great sacrifice to attend to my duties in this body; nevertheless, with the exception of a very few hours, I have been in attendance at all the sittings of the Convention, and of the several committees of which I have been named a member. I am desirous of closing our work as quickly as possible; but at the same time I know it is necessary, though we may judge we are at the close of our labors, that we should scan with a critical eye the various provisions of this important article, and know that we do not incorporate anything into this Constitution that will make it an instrument to which we should be unwilling to affix our names.

Mr. MASON. The Judiciary, sir, constitutes one of the coordinate branches of our proposed State Government, and therefore in the investigation of that article which establishes, defines, and limits the powers and duties of that coordinate branch, I think we should take care that nothing is passed over lightly, or with only slight consideration. I do not desire that members should be encouraged in occupying much of the time in talking, but let them spend some portion of the time in thinking these matters over, and let them then judiciously exercise the prerogative which belongs to them as members of the Convention, in casting their votes on the various questions as they arise for consideration.

I came to this Convention against my will, having been nominated while I was absent in another county, and elected during such absence; yet I felt that I was under an obligation to the people who had elected me to come here and represent them, and perform the duties required of me. My colleague (Mr. Wetherill) has expressed his anxiety to get through speedily and go home on account of his own business, and I share in that feeling. My business is suffering in my absence as much as his. But, sir, I enlisted for the war, and I am for fighting it through. I want to present a Constitution that will meet, and deserve to meet, the approbation of the people of Nevada Territory, so that it may become the State of Nevada. That is the end I want to accomplish. I have been opposed to adopting a State Government on a previous occasion, upon principle, because of our poverty, and because of our isolated position; but, sir, it is at this time a Federal call. [Good!] It has come to us from Washington—an appeal to our patriotism, an appeal to the loyalty of our hearts, and I respond to that appeal. And, sir, if this Constitution shall be such as to meet with my approbation, I will go back to Esmeralda, and to other counties in this Territory, as I may have opportunity, and will advocate it with all the zeal and energy in my power, and labor to induce the people to sustain and support the Constitution, in response to the call of the government; but, sir, unless the Constitution be such as I can conscientiously approve, I cannot give it that support, however much I might desire to do so; because, if I did, I should be derelict to my duty, and basely unfaithful to the people who have placed me in this position. It is for this important reason, sir, that I am willing to stay here until Tuesday, Wednesday, or even Thursday night, if necessary, in order to consummate and perfect our labors, and prepare this Constitution in such shape that it can be presented, with argument and reason, to the favorable consideration of the people of Nevada Territory.

I want to see to it carefully, sir, in the consideration of this judicial article, that there is no encroachment of one of the coordinate branches upon the other—that the legislative, executive, and judicial departments are kept entirely distinct and separate. For I wish to say—and I have not heretofore occupied much of the time of the Convention, nor do I propose to now—that I hold to the doctrine advanced by John Jay, one of the most eminent statesmen that ever breathed in the United States of America, that whenever there is an encroachment of one of the coordinate branches of the government upon another, liberty is in danger. I want no such encroachment, but I want to keep each department separate and distinct from the other, and consequently I want to exercise care and circumspection in the investigation of this judicial article, wherein our rights of person and property are involved.

But I perceive that my time is up, and I will not further trespass upon the patience of the Convention.

Mr. BANKS. I renew my motion to lay this matter on the table.

Mr. FRIZELL. I wish to say one word on this subject. ["Leave, leave!"]

The PRESIDENT. Does the gentleman from Humboldt withdraw his motion?

Mr. BANKS. I cannot withdraw it.

The PRESIDENT. Then the Chair is reluctantly compelled to rule the gentleman from Storey not in order.

The question was taken on the motion of Mr. Banks to lay the article on the table, and the motion was agreed to.

THE SELECTION ORDINANCE.

Mr. DUNNE, from the Committee on Schedule, submitted the following report:

MR. PRESIDENT:—YOUR Committee on Schedule, to whom was referred an ordinance concerning elections, report the same back, and recommend the following amendments:

1st. In Section 1, strike out the words "member of," in the last line but one, and insert instead the words "Representative in."

2d. Strike out Section 15.

And they respectfully recommend its passage with such amendments.

All of which is respectfully submitted.

E. F. DUNNE, Chairman, pro tem.

The report was adopted, and the ordinance having been read, as amended, was referred to the Committee of the Whole.

COMMITTEE OF THE WHOLE—ORDINANCE.

On motion of Mr. CHAPIN, the Convention resolved itself into Committee of the Whole, (Mr. CHAPIN in the Chair,) for the consideration of the ordinance just reported from the Committee on Schedule.

The SECRETARY read the preamble, as follows:

WHEREAS, The Enabling Act passed by the Thirty-Eighth Congress, and approved March first, A. D. 1864, requires that the Convention charged with the duty of framing a Constitution for a State Government "shall provide by ordinance for submitting said Constitution to the people of the Territory of Nevada for their ratification or rejection," on a certain day prescribed therein; therefore, this Convention, organized in pursuance of said Enabling Act, do establish the following

ORDINANCE.

No amendment being offered, the preamble was read, was adopted.

Section 1 was read, as follows:

SECTION 1. On the first Wednesday of September, A. D. 1864, this Constitution shall be submitted to the qualified electors of said Territory in the several counties thereof, for their approval or rejection; and further, on the first Tuesday after the first Monday of November, A. D. 1864, there shall be a general election in the several counties of said Territory, for the election of State officers, Supreme, District, and County Judges, members of the Legislature, Representatives in Congress, and three Presidential electors.

No amendment was offered, and the section, as read, was adopted.

Section 2 was read, as follows:

SEC. 2. All persons qualified by the laws of said Territory to vote for Representatives to the General Assembly on the said twenty-first day of March, including those in the army of the United States, both within and beyond the boundaries of said Territory, and also all persons who may by the aforesaid laws be qualified to vote on the first Wednesday of September, A. D. 1864, including those in the aforesaid army of the United States, within and without the boundaries of said Territory, may vote for the adoption or rejection of said Constitution on the day last above named. In voting upon this Constitution, each elector shall deposit in the ballot-box a ticket, whereon shall be clearly written or printed "Constitution, Yes," or "Constitution, No," or such other words that shall clearly indicate the intention of the elector.

No amendment being offered, the section was adopted as read.

Section 3 was read, as follows:

SEC. 3. All persons qualified by the laws of said Territory to vote on the first Tuesday after the first Monday of November, A. D. 1864, including those in the army of the United States within and beyond the boundaries of said Territory, may vote on the day last above named for State officers, Supreme, District, and County Judges, Members of the Legislature, Member of Congress, and three Presidential electors to the Electoral College.

Mr. COLLINS. I move to make the same amendment in this section as was made by the Committee in Section 1; that is, to strike out the words "member of," in the last line but one, and insert instead the words "Representative in."

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

Section 4 was read, as follows:

SEC. 4. The elections provided in this ordinance shall be holden at such places as shall be designated by the Boards of Commissioners of the several counties in said Territory. The Judges and Inspectors of said elections shall be appointed by said Commissioners, and the said elections shall be conducted in conformity with the existing laws of said Territory in relation to holding the general election.

No amendment being offered, the section, as read, was adopted.

Section 5 was read, as follows:

SEC. 5. The Judges and Inspectors of Elections shall carefully count each ballot immediately after said elections, and forthwith make duplicate returns thereof to the Clerks of the said County Commissioners of their respective counties, and said Clerks shall immediately transmit an abstract of the same, inclosed in an envelope, by the most safe and expeditious conveyance, to the Governor of said Territory, marked "Election Returns."

Mr. JOHNSON. I would ask the chairman of the committee whether there is a provision in this Ordinance to the effect that these votes shall be cast with the use of separate ballots? We have at the same time to vote for a Territorial Legislature, and I desire to learn whether there is anything in the Ordinance to prevent that vote being placed upon the same ballot with the vote of "Constitution—Yes," or "Constitution—No?"

Mr. COLLINS. No, sir; because I thought that, being a Territorial election, the vote might all be taken together, on one ballot. And in

the subsequent section, in relation to the soldiers' vote, I have made provision for but one ballot, as gentlemen will see when that is reached.

No amendment being offered, the section, as read, was adopted.

Section 6 was read, as follows:

SEC. 6. Upon the receipt of said returns, and the returns of the soldiers' vote, as hereinafter provided, or within twenty days after the elections, if said returns be not sooner received, it shall be the duty of the Board of Canvassers—to consist of the Governor, United States District Attorney, and Chief Justice of said Territory—to canvass the returns of said elections, both Civil and Military, in the presence of all who may wish to be present, and immediately publish an abstract of the same in some newspaper of said Territory, and shall forward them by mail or otherwise —— copies of said newspaper to the clerks of each county of said Territory, for the use of the county and township officers thereof. The said Board shall, after the said November election and canvassing of its votes, issue certificates of election to such persons as were elected on the said first Tuesday after the first Monday in November, A. D. 1864. The Governor, of said Territory, immediately after ascertaining that this Constitution has been ratified by the people, shall make proclamation of the fact in some newspaper as aforesaid, and thenceforth this Constitution shall be ordained and established as the Constitution of the State of Nevada.

Mr. COLLINS. It will be seen that this section contemplates the sending of a blank number of the newspaper, containing abstracts of the returns, to each county, for the use of the county officers, instead of incurring the expense of having them published *in extenso*. I would like to see that blank filled up.

Mr. MASON. I will move to fill the blank with the word "ten."

Mr. BANKS. I think that is not enough. Certainly ten is a very small number. I understand the proposition to be, that instead of publishing any great number of these election returns, an abstract may be published in one newspaper—in a supplement, I suppose—and that is to be sent to the county clerks for distribution in the several counties. If I am correct in that, then I think there ought to be sent to each county a number equal, at least, to the number of voters in such county. I will move to amend so as to provide for sending a number to each county corresponding with the number of voters therein.

Mr. COLLINS. I would inquire, what is the necessity for that? The law requires that election returns shall be made to reach certain parties, and hence official advertisement is made; but in this case it is presumed that the whole Territory will understand what has been the result of the election. Every local paper will publish it as a matter of news. Now suppose, for instance, that twenty papers are sent to each County Clerk; they can be distributed through the county, sent to different persons and officers, and posted up in public places, and the necessary information will be disseminated, without any doubt. Last year the returns were published in every county, and a long bill of expense was run up, without securing any material advantage in return. I think if a certain number of the abstract of returns, as published officially in one newspaper, is provided to be sent to each county, that is all that is required.

Mr. JOHNSON. If we can have the returns published as advantageously as last year, it might be well to publish them.

Mr. BANKS. As it relates only to the returns of the election, I will withdraw my motion.

The CHAIRMAN. The question is on the motion to fill the blank with the word "ten."

Mr. WARWICK. I move to amend by making the number fifty. We have only nine counties in the State, and it will be a very small additional expense. I think fifty is a small enough number.

Mr. CROSMAN. What is the necessity for sending out any number of copies of the official result? As the gentleman from Storey has stated, every newspaper will publish the result, and every voter in the Territory will know it long before the official returns are published.

Mr. COLLINS. There may be some counties where no newspapers are printed, and I think it would be well to furnish leading men in the several towns with the official returns, so that they may post them up for public information. In those counties where newspapers are published, I have no doubt the information will be furnished through such newspapers.

Mr. CROSMAN. I move to amend by striking out all that part relating to newspapers.

The CHAIRMAN. It is not now in order; there is already an amendment to an amendment.

Mr. STURTEVANT. Last year, I know, it was considered quite a desirable thing to accommodate those counties where there were no newspapers, but I am of the opinion that pretty much every enlightened man in the Territory takes at least one good newspaper, and certainly every good newspaper will publish the vote on the Constitution.

Mr. COLLINS. This provision refers also to the returns of the election of State officers.

Mr. STURTEVANT. Very well; that makes no difference. The common charge of the newspapers for such a publication is about nine hundred dollars, I believe. I hope the whole thing will be voted down.

Mr. WARWICK. I will modify my amendment by making it "one hundred," instead of "fifty." When the form is once set up, the additional copies printed will cost only about a cent apiece, and I do not believe the whole thing will cost the State more than one hundred dollars.

Mr. HAWLEY. I hope we shall decide not to furnish any copies at all, because I believe the bill would probably be extravagantly high. I think the gentleman from Lander is guided by mere opinion on the subject of the expense, rather than by any positive knowledge, and in my opinion, there is no newspaper office in the Territory that would set up a form containing the entire vote of the Territory of Nevada, at

such election, for any such sum as one or two hundred dollars, when the price of composition is one dollar per thousand ems. We should find that the bill would be enormous, and I really cannot see the necessity for it, or any advantage to be gained, so long as every newspaper will publish the result as a matter of news. And what can the county officials can make of the copies sent them, is entirely beyond my comprehension. I trust that we shall not provide for insuring any such expense.

The question was taken on the amendment offered by Mr. Warwick, to fill the blank with the words "one hundred," and it was not agreed to.

The question was then taken on the motion of Mr. Mason, to fill the blank with the word "ten," and it was not agreed to.

Mr. CROSMAN. Now my motion will be in order. I move to strike out all that part of the section which proposes to have the result of the election published, and copies sent to county clerks.

Mr. COLLINS. I hope the Convention will not strike out the provision for publication. If it is done, how are they to get it into the newspapers?

Mr. CROSMAN. Any paper would publish it as news.

Mr. COLLINS. I hope the amendment will not prevail. It should be the duty of the Board of Canvassers, after getting the complete returns, to publish them. The provision for sending copies was put in merely with a view to avoiding the great expense involved in publishing the returns from the whole State in each county. I think it may be wise to strike out that provision, but certainly the official abstract of returns ought to be published, under the signatures of the members of the Board of Canvassers. Such a publication would be authoritative, and then the newspapers could scatter the information therein contained to the four winds.

The SECRETARY. What is the portion proposed to be stricken out?

Mr. CROSMAN. I will modify my amendment so as to strike out these words only:

"And shall forward them by mail or otherwise, —— copies of said newspaper, to the clerks of each county of said Territory, for the use of the county and township officers thereof."

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

Section 7 was read, as follows:

SEC. 7. For the purpose of taking the vote of the electors of said Territory who may be in the army of the United States, the Adjutant-General of said Territory shall, on or before the fifth day of August next following, make out a list in alphabetical order, and deliver the same to the Governor, of the names of all the electors, residents of said Territory, who shall be in the army of the United States, stating the number of the regiment, battalion, squadron of cavalry, or battery of artillery, and the letter of the company to which such electors belongs, and also the county and township of his residence in said Territory.

No amendment being offered, the section, as read, was adopted.

Section 8 was read, as follows:

SEC. 8. The Governor shall classify and arrange the aforesaid returned list, and shall make therefrom separate lists of the electors belonging to each regiment, battalion, squadron, and battery therein said Territory in the service of the United States, and shall, on or before the fifteenth day of August following, transmit, by mail or otherwise, to the commanding officer of each regiment, battalion, squadron, and battery, a list of electors belonging thereto, which said list shall specify the name, residence, and rank of each elector and company to which he belongs, if to say, and also the county and township to which he belongs and in which he is entitled to vote.

No amendment was offered, and the section, as read, was adopted.

Section 9, was read, as follows:

SEC. 9. Between the hours of nine o'clock, A. M., and three o'clock, P. M., on each of the election days hereinbefore named, a ballot box or suitable receptacle for votes shall be opened under the immediate charge and direction of three of the highest officers in command, for the reception of votes from the electors whose names are upon said list, at each place where a regiment, battalion, squadron, or battery of soldiers from said Territory in the army of the United States may be on that day; at which time and place said electors shall be entitled to vote for all officers for which by reason of their residence in the several counties in said Territory they are authorized to vote, as fully as they would be entitled to vote in the several counties and townships in which they reside, and the votes so given by such electors, at such time and place, shall be considered, taken, and held to have been given by them in the respective counties and townships in which they are resident.

No amendment being proposed, the section, as read, was adopted.

Section 10 was read, as follows:

SEC. 10. Each ballot deposited for the adoption or rejection of this Constitution, in the army of the United States, shall have distinctly written or printed thereon, "Constitution, No;" and for "Constitution, Yes," or "Constitution, No;" and further, for the election of State officers, Supreme, District, and County Judges, members of the Legislature, member of Congress, and three Presidential Electors, the name and office of the person voted for shall be plainly written or printed on one piece of paper. The name of each elector voting as aforesaid, shall be checked upon the said list at the time of voting by one of the said officers having charge of the ballot-box. The said officers having charge of the election shall count the votes and compare them with the checked list immediately after the closing of the ballot-box.

Mr. COLLINS. I move to amend this section also, by striking out the words "member of," in the seventh line, and inserting instead the words "Representative in."

The question was taken, and the amendment was agreed to.

No further amendment was proposed, and the section, as amended, was adopted.

Section 11 was read, as follows:

SEC. 11. All the ballots cast, together with the said voting list checked as aforesaid, shall be immediately sealed up and sent forthwith to the Governor of said Territory, at Carson City, by mail or otherwise, by the commanding officer, who shall also make out and certify duplicate returns of votes given according to the forms hereinafter prescribed, seal up and immediately transmit the same to the said Governor, at Carson City, by mail or otherwise, the day following the transmission of the ballots, and the voting list herein named.

No amendment being offered, the section as read, was adopted.

Section 12 was read, as follows:

SEC. 12. The form of returns of votes to be made by the commanding officers to the said Governor shall be as follows, viz:

Returns of soldiers' votes in the (here insert the regiment, detachment, battalion, squadron, or battery.)

(For first election—On the Constitution.)

I——, hereby certify, that on the first Wednesday of September, A. D. 1864, the electors belonging to the (here insert the name of the regiment, detachment, battalion, squadron, or battery) cast the following number of votes for and against the Constitution for the State of Nevada, viz:

For "Constitution—Yes."—(Number of votes written in full and in figures.)

Against "Constitution—No."—Number of votes written in full and in figures.)

(Second election—For State and other officers.)

I——, hereby certify, that on the first Tuesday after the first Monday in November, A. D. 1864, the electors belonging to the (here insert as above) cast the following number of votes for the several offices and persons hereinafter named, viz:

For Governor.—(Names of persons voted for, number of votes for each person voted for written in full, and also in figures, against the name of each person.)

For Lieutenant-Governor.—(Names of candidates, number of votes cast for each, written out and in figures, as above.)

Continue as above till the list is completed.

Attest, A. B.

Commanding officer of the (here insert regiment, detachment, battalion, squadron, or battery, as the case may be.)

Mr. HOVEY. The language used, as the Secretary read it, was "against the Constitution, no." It seems to me that cannot be correct.

Mr. FRIZELL. That is the correct form.

Mr. JOHNSON. I suggest that in the third line, after the words "shall be," we should insert the words, "in substance," so as to read, "shall be, in substance, as follows"—so that the returns may not be invalidated for non-compliance with the literal form, as prescribed, whilst there is a substantial compliance. It is important only to preserve the substance, without regard to the form of expression.

Mr COLLINS. If the gentleman will offer that as an amendment, I see no objection.

Mr. JOHNSON. I move to amend by inserting the words suggested.

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

Section 13 was read, as follows:

SEC. 13. The Governor of said Territory is requested to furnish each commanding officer within and beyond the boundaries of said Territory, proper and sufficient blanks for said returns.

No amendment being offered, the section, as read, was adopted.

Section 14 was read, as follows:

SEC. 14. The provisions of this ordinance in regard to the soldiers' votes, shall apply to future elections under this Constitution, and be in full force until the Legislature shall provide by law for taking the votes of citizens of said Territory in the army of the United States.

Mr. COLLINS. I desire to offer an amendment in Section 6, in regard to the vote on the Constitution, if the Secretary will read the section again.

The SECRETARY read Section 6.

Mr. COLLINS. I desire to move to insert this language:

"And if the majority of all the votes cast for and against this Constitution shall be in its favor, then the Governor shall immediately make proclamation."

Mr. PROCTOR. I would like to offer an amendment there, to strike out "United States District Attorney," as one of the Board of Canvassers, and insert instead "the President of this Convention."

Mr. JOHNSON. No, no. Such an amendment would conflict with the Enabling Act.

Mr. COLLINS. The language in the Enabling Act does not permit it. It provides that "the returns of said election shall be made to the acting Governor of said Territory, who, with the United States District Attorney and Chief Justice of said Territory, or any two of them, shall canvass the same," etc.

Mr. PROCTOR. I withdraw the amendment.

Mr. COLLINS. My amendment is to amend the section by inserting the words which I have read, so that the section will read:

"Upon the receipt of said returns and the returns of the soldiers' vote, as hereinafter provided, or within twenty days after the elections, if said returns be not sooner received, it shall be the duty of the Board of Canvassers, to consist of the Governor, United States District Attorney, and Chief Justice of said Territory, to canvass the returns of said elections, both civil and military, in the presence of all who may wish to be present, and if the majority of all the votes cast for and against this Constitution shall be in its favor, then the Governor shall immediately publish an abstract of the same in some newspaper of said Territory, and shall make proclamation of the fact," etc.

Mr. JOHNSON. Allow me to suggest that a further amendment is required in the same connection, which might be made at the same time, so as to render this section conformable to the Enabling Act. It is to add after the names of the officers constituting the Board of Canvassers, the words "or any two of them." Such is the reading of the Enabling Act.

Mr. COLLINS. I am very positive that those words were contained in my original draft of the ordinance.

Mr. HAWLEY. It seems to me that the phraseology is not as accurate as it should be. I think the language ought to be "adoption or rejection," instead of "for and against."

Mr. COLLINS. Will the gentleman point out the difference between the two forms of expression?

Mr. HAWLEY. I am not particular about the language, but I must confess that I would prefer the other form.

The question was taken on the amendment proposed by Mr. Collins, and it was agreed to.

Mr. COLLINS. Now I move, in accordance with the suggestion of the gentleman from Ormsby, (Mr. Johnson,) to insert after the word "Territory," where it first occurs, the words "or any two of them."

The question was taken, and the amendment was agreed to.

Mr. JOHNSON. I desire to call attention to the latter part of this section, which reads as follows:

"The Governor of said Territory, immediately after ascertaining that this Constitution has been ratified by the people, shall make proclamation of the fact in some newspaper as aforesaid, and thenceforth this Constitution shall be ordained and established as the Constitution of the State of Nevada."

I suggest whether this is not unnecessary, since the amendment just adopted in the former part of the section, and also whether it is not really in conflict with the Enabling Act, which makes it the province of the President of the United States to issue his proclamation? The language of the Enabling Act is:

"Whereupon it shall be the duty of the President of the United States to issue his proclamation, declaring the State admitted into the Union on an equal footing with the original States, without any further action on the part of Congress."

It appears to me that the Enabling Act is conclusive on that point.

Mr. COLLINS. I think we have a right to consider that when this Constitution is ratified by the people of this Territory, it is adopted by the Congress of the United States. Congress has simply provided in the Enabling Act that upon the receipt of official information of such action by the people, the President shall perform the ministerial act of issuing his proclamation.

Mr. JOHNSON. I submit that under the Enabling Act, the act of admission is not complete until the President of the United States shall have issued his proclamation. That is the act of completion named in the Enabling Act, and not the proclamation of the Governor, or of any other person in authority.

Mr. COLLINS. I am not sure but the suggestion is a good one.

Mr. JOHNSON. I submit it merely as a suggestion. I do not think there is any necessity for such a provision. Neither the President of the United States nor the Governor of this Territory can add to or subtract from the terms and conditions of the Enabling Act. It is an authorized Act of the people of the United States, providing for our admission into the Union upon certain contingencies, but the fact is not completed until the President shall have issued his proclamation, based upon the action of the people of Nevada adopting the Constitution and form of State Government which their Convention shall have framed. That consummates the work, and to provide that anybody else shall proclaim the fact appears to me to be superfluous in the extreme. Therefore, I propose that we should strike out all that portion of the section.

Mr. CHAPIN. If the President should for any reason withhold his proclamation, a provision of this nature would place us in rather an embarrassing position.

Mr. COLLINS. I would ask the gentleman from Ormsby (Mr. Johnson) whether this will not suit his idea? Amend that latter portion of the section so as to read as follows:

"The Governor of said Territory, immediately after ascertaining that this Constitution has been ratified by the people, shall make proclamation of the fact in some newspaper as aforesaid, and when the President of the United States shall have issued his proclamation, declaring the State admitted into the Union on an equal footing with the original States, thenceforth this Constitution shall be ordained and established as the Constitution of the State of Nevada."

Mr. JOHNSON. The main objection is, that the entire matter is superfluous. The act is fully performed when the President of the United States issues his proclamation, and no act of the Governor or anybody else can impart additional strength to it. The very instant the President of the United States issues his proclamation, the work is completed, and the State of Nevada at once becomes one of the States of the Union.

Mr. BANKS. I see very clearly the necessity for an amendment of the character suggested, and I hope time will be given to prepare one in proper shape.

Mr. PROCTOR. It seems to me it would be proper to strike out all after that portion requiring the Governor to issue his proclamation.

Mr. JOHNSON. It may be well enough to provide that the Governor shall declare the fact, if the Constitution shall be adopted, that a majority has voted in its favor. We might adopt so much of the section as reads thus:

"The Governor of said Territory, immediately after ascertaining that this Constitution has been ratified by the people, shall make proclamation of the fact in some newspaper as aforesaid."

If we stop here it is quite sufficient; and I will move, as an amendment, to strike out all which follows the language I have just quoted, in the last three lines of the section as printed.

The question was taken, and the amendment was agreed to.

Mr. HOVEY. My attention has been called by one of the reporters to the language of Section 12, where it provides for the mode of voting for and against the Constitution. It says, "Against Constitution—No," and there appear to be two negatives. I am not sure about the correctness of the language.

Mr. MASON. Two negatives become equivalent to an affirmative, because one destroys, or reverses the sense of the other.

Mr. DUNNE. That is all right as it reads. It says, "For Constitution—Yes," and "Against Constitution—No." All it wants is a comma, or some proper punctuation mark, after the words "for" and "against." The vote "for," is understood to be the vote "Constitution—Yes," and the vote "against," is the vote "Constitution—No."

Mr. COLLINS. There is simply a word understood there—the word "Constitution." If that were supplied the reading would be, "For Constitution—Constitution, Yes," and "Against Constitution—Constitution, No."

Mr. TAGLIABUE. If there is no further amendment, I move the adoption of the Ordinance as amended.

Mr. BANKS. Is there any provision for making returns to the county clerks?—or is it presumed that the Governor will transmit them? It occurs to me that official information should be furnished in some way to the several counties, of the number of votes cast for the various candidates for county officers. It will be observed that by the terms of the Ordinance, the rules therein prescribed are to govern in the election of all officers under this Constitution, and the provisions in regard to the soldiers' vote are to apply to future elections, until the Legislature shall make other provisions on the subject. I may be in error, but nevertheless I make the inquiry.

Mr. COLLINS. I do not know that I get the idea exactly.

Mr. BANKS. In this Ordinance, in addition to prescribing rules for voting for and against the Constitution, is it not also provided that the same rules shall also apply in voting at any elections, previous to the enactment of any law on the subject by the Legislature?

Mr. COLLINS. It is.

Mr. BANKS. Well, my inquiry is—does it provide in any manner for the making of returns of such elections to the various counties?

Mr. COLLINS. It requires the judges and inspectors of elections to make returns of the votes to the respective County Commissioners, and the clerks will forward the returns to the Board of Canvassers.

Mr. BANKS. How about the soldiers' vote?

Mr. COLLINS. The returns are to be made by their commanding officers, wherever they may be. The commanding officer is required immediately upon the counting of the votes by the three highest officers in command, to seal up the returns and send them forthwith to the Governor, who, after the canvass, taking the military and civil returns together, is required to publish an abstract of the same in some newspaper, —— copies of which are to be sent to the county clerks. No—that latter provision, I believe, was stricken out.

Mr. BANKS. Then I understand—this provision last referred to having been stricken out—that there is really no provision for any official mode by which the county officers of the various counties are to be notified as to the votes cast for the local officers. That being the case, it will be necessary to adopt some such provision; and I think our action in striking that out was hasty and ill advised. The result is, that there is now no provision made for notifying the various county officers of the number of votes cast by the soldiers for local officers, and it is evidently a defect. It occurs to me that the best thing we can do, is to reinstate the portion of Section 6 which was stricken out, and fill the blank with some number, however insignificant. One, two, or five, may be sufficient, but some number of copies should be sent.

Mr. FRIZELL. I did not listen attentively to the reading of the entire ordinance, but I would call the attention of the gentleman from Humboldt (Mr. Banks) to the fact that there is a provision somewhere—it may be in the Miscellaneous Provisions, or in the Schedule—to the effect that the county officers, elected at the Territorial election, shall hold over under the State organization.

Mr. COLLINS. I would say, in regard to the objection that has been raised, that, for instance, in voting on the Constitution, the soldiers will vote for Storey County, or Ormsby County, or other counties, according to their citizenship; but there is now no means of getting information to the counties, except through the newspapers which will publish the result, and the President's proclamation.

Mr. BANKS. I see the point, and we will have to put in something in the place of that which we have stricken out.

The CHAIRMAN. That seems to be the only method provided for notifying the county clerks.

Mr. BANKS. I ask for the reading of that which was stricken out.

The SECRETARY read as follows:

"And shall forward them by mail or otherwise —— copies of said newspaper to the clerks of each county of said Territory, for the use of the county and township officers thereof."

Mr. BANKS. That provides for just this thing. It covers the point exactly. The Governor receives from the commanding officers of the soldiers statements of the number of votes cast by them, and of course those statements include the counties to which they belong, and then there is a publication made in due form, of this matter which has thus been sent to the Governor, and he sends copies of that publication, or will, if this provision be reinstated, to the county clerks, for the information of the officers and the people of each county. That seems to have been the object of the gentleman from Storey (Mr. Collins) in framing this section; that is, thus to notify the people of the various counties, through the Governor, as to how many votes the soldiers may have cast for the several candidates for offices in each county.

Mr. HAWLEY. Permit me to suggest to the gentleman, that by referring to the language of Section 6, I think he will ascertain that it is applicable only to the votes cast for and against the Constitution, and not to the November election, when the candidates for county offices are to be voted for. The counties, it seems to me, cannot be so much interested as to the number of votes cast by the soldiers, one way or the other, on that question, as to render it necessary to incur this expense.

Mr. BANKS. That brings up another thing, which has evidently been lost sight of.

The CHAIRMAN. I will suggest that there is no question before the committee.

Mr. BANKS. I trust the Chair will indulge

me a moment, previous to the introduction of any amendment, for the purpose of explanation, in order to see if we can all understand this matter. There is one point, I say, which I think has been very generally lost sight of. I do not claim to be familiar with the subject, but I see that others are in the dark as well as myself, and I am a good deal surprised to learn that the members of the Committee on Schedule have not made themselves as familiar with it as I supposed they had, for I was willing to act on the matter merely upon their report. Now, sir, this ordinance prescribes the manner in which the votes shall be cast for and against the Constitution, and it also provides that the mode of holding the election therein prescribed shall obtain, so far as other elections are concerned, until such time as the Legislature shall pass laws to supersede it. Hence, so far as elections of State and county officers are concerned, before the Legislature shall have passed laws regulating such elections, the rules herein prescribed must prevail, to the exclusion of all other rules. For that reason, I hold that it is necessary to reinstate the language which we have stricken out of this section, and therefore I move that it be reinstated.

Mr. COLLINS. This section makes provision not only for the vote on the Constitution, but also for the vote on the State officers. It says, upon the receipt of "said returns"—that is, the returns of both elections—it shall be the duty of the Board of Canvassers to do certain things—having both elections in view all the time.

"And shall forward them, by mail or otherwise, —— copies of said newspaper to the clerks of each county of said Territory, for the use of the county and township officers thereof."

That has reference to both elections, and covers the entire ground.

Mr. JOHNSON. Does not the canvass of the votes for State officers embrace as well the canvassing of the votes for members of the Legislature?

Mr. COLLINS. Precisely.

Mr. JOHNSON. I submit whether it is usual or customary for a State Board to canvass the votes and ascertain who may have been elected to the Legislature? And especially in view of the time, which is a matter of infinitely more importance, it seems to me that the canvass of the votes for members of the Legislature should be made by the officers of the county.

Mr. COLLINS. The ordinance requires that in each county the inspectors and judges of elections shall count the votes, and send the returns in duplicate to the clerk of the County Commissioners, and the clerk then prepares an abstract of the same, which is sent to the Board of Canvassers at Carson. That is in compliance with the Enabling Act, and I have followed the language of the Enabling Act as nearly as possible. But the returns are still in the hands of the County Commissioners, who can proceed to canvass the votes on county officers.

Mr. JOHNSON. I do not think it reads exactly in that way. Here is Section 5 of the Ordinance, which, I take it, refers, as well as Section 8, to the vote on the Constitution, and it only provides that the returns shall be made to the clerks of the County Commissioners of the respective counties, an abstract of the same to be immediately transmitted to the Governor. Then follows Section 6, providing that upon the receipt of said returns, and the returns of the soldiers' vote, they shall be canvassed by the Board of Canvassers, consisting of the Governor, the United States District Attorney, and the Chief Justice. They are to canvass "the returns of said elections, both civil and military," and then they are required immediately to publish an abstract of the same, and forward copies to the county clerks, by mail or otherwise. I submit that there is no provision for a canvass of the votes for county officers or members of the Legislature in the respective counties. If there is, I certainly am not able to see it.

Mr. COLLINS. I think the gentleman can find it. Section 5 provides that—

"The judges and inspectors of elections shall carefully count each ballot immediately after the election, and forthwith make duplicate returns thereof to the clerks of the said County Commissioners of their respective counties."

Mr. JOHNSON. Well, what is to be done then?

The CHAIRMAN. I think the Committee is without a quorum. The Secretary will count the members present.

The SECRETARY reported a quorum present.

Mr. COLLINS. The gentleman from Ormsby is correct. I do not find the provision.

Mr. JOHNSON. I thought so. Now I submit that it is necessary. Take the case, for example, of the District Judges—

Mr. COLLINS. I think it must have been correct in the original ordinance. I think I could not have thus overlooked so important a matter.

Mr. JOHNSON. There may be a close election in Humboldt County, for instance, but the provision in Section 6 is, that the returns shall be canvassed by the State Board of Canvassers, upon the receipt of the returns, "or within twenty days after the election." That would bring it up to about the 27th of November, and it is proposed that the Legislature shall convene on the first Monday in December. These returns could not be returned from the seat of Government in season for the members to reach there at the appointed time for the assembling of the Legislature. And it is a matter of yet greater importance in reference to our District Judges.

Mr. COLLINS. I am confident that there is some mistake in the printing. It must be so.

Mr. BANKS. I would like to ask a question of the gentleman from Ormsby, (Mr. Johnson.) He refers to the importance of having the local

returns made to the Board of Commissioners, and canvassed by them, I understand.

Mr. JOHNSON. Yes, sir.

Mr. BANKS. Now, sir, the gentleman will observe this, that there can be no official determination of the result, until the soldiers' vote is obtained. And the framer of this ordinance evidently had in his mind this prominent fact, of the necessity of ascertaining what has been the soldiers' vote, before the election can be officially decided. Therefore, if the section is left to stand just as it is in the original, I think no very great hardship or evil can result. It simply provides that only upon the return of the soldiers' vote, which can most conveniently be made through the Governor, can the result of the election be officially decided. I think perhaps it would be well enough to provide, however, for the making of the returns directly to the county officers.

Mr. JOHNSON. I have advocated no proposition which would be inimical to that. My proposition is merely that the votes should be canvassed in the county.

Mr. BANKS. That is, so far as the home vote, for local officers, is concerned.

Mr. JOHNSON. There is nothing contrary to that view in what I have proposed. The return is made to the County Commissioners, and they should make the canvass.

Mr. BANKS. Of course the canvass of the home vote is easily made in the way proposed, and I think it is desirable; but then it seems to me that the returns of the soldiers' vote can best be made by sending them, in the first place, from the place where the soldiers are stationed to the Governor, and then allowing him to send them to the various counties.

Mr. JOHNSON. If that is required to be done, there is another obstacle which presents itself. The time becomes so short that we shall be compelled to change our programme in regard to the period of the meeting of the Legislature, and also when the District Judges shall enter upon the discharge of the duties of their office. Twenty days after the election, allowed the Board of Canvassers to wait for returns of the soldiers' vote, brings it to the 27th of November, and then there is only from three to seven days intervening between the declaring of the result of the election, and the time when we propose that the District Judges shall enter upon the discharge of their duties; and not only that, but when they shall actually open their Courts. I submit that the time mentioned is too short to make returns from the remote counties and receive them back in season for the judges to enter upon their duties.

Mr. BANKS. How, then, would the gentleman from Ormsby propose to get the soldiers' vote?

Mr. JOHNSON. I only say this, that if we carry out our original programme we must devise some plan of ascertaining the result of the election more speedily.

Mr. COLLINS. I wish, in justification of myself, to read this section as it is in the original, because we have been considering a printed copy. In the original, it reads as follows:

"The judges and inspectors of elections shall carefully count each ballot immediately after the election, and forthwith make duplicate returns thereof to the clerks of the said County Commissioners of their respective counties, and said clerks shall immediately transmit an abstract of the same, inclosed in an envelope, by the most safe and expeditious conveyance, to the Governor of said Territory, marked 'Election Returns.'"

I felt confident that I could not have made such a blunder.

Mr. GIBSON. I do not see but that it reads the same in the printed copy.

Mr. HAWLEY. I did not observe any change as it was read.

Mr. MASON. I move a reconsideration of the vote adopting Section 6.

Mr. HAWLEY. I rise to a point of order. I believe the motion to reconsider has already been made in this committee, and carried.

The CHAIRMAN. It was reconsidered, I think, and then again adopted.

Mr. WETHERILL. I would like to ask if the Secretary understands that the section has been reconsidered after its final adoption.

Mr. BANKS. I made a motion to reconsider the vote by which a certain portion of the section was stricken out, and I make the point of order that the question now before the committee is on that motion. I ask for a ruling upon that point.

Mr. MURDOCK. Let me ask the gentleman from Humboldt a question. Did not he vote with the minority on that amendment?

Mr. DUNNE. I would like to ask a question of the Chair.

The CHAIRMAN. The Chairman will endeavor to answer it.

Mr. DUNNE. I would ask whether he considers that it is in order to reconsider an amendment to a section, before a reconsideration of the adoption of the section?

Mr. BANKS. Allow me to make a suggestion in regard to that. A great many rather unparliamentary practices have been indulged here, simply because the body is small, and the members not disposed to be captious in respect to the mode of proceeding. I do not suppose that it is now the intention of this body to fall back upon the strict requirements of parliamentary law.

The CHAIRMAN. I find I was mistaken. The amendment suggested by the gentleman from Humboldt (Mr. Banks) has not been adopted; neither was the question put on reconsideration. The question will now be upon the motion of the gentleman from Humboldt, to reinstate the language which was stricken out of Section 6.

Mr. DUNNE. May I be allowed to say a word or two in the way of explanation, as something has been said in regard to the diligence of the Committee on Schedule in its consideration of this ordinance. I will say that

this Convention has heaped duty after duty upon that committee, until the burden has become almost unsupportable. First, the Schedule was referred to that committee, which was eminently proper; then the whole Article on Miscellaneous Provisions; then the whole Article on Salaries, with all the different blanks to be filled after careful consideration; and then, on the top of all that, the committee was asked to consider this long and intricate ordinance. The committee has held five or six sessions, and two nights continued in session till twelve o'clock. When the ordinance was brought up I believe it was the unanimous sense of the committee that no one understood better about its various provisions than the able member who drafted and presented it to the Convention, and therefore it was the unanimous voice of the committee to report it back with only those slight amendments which were very obviously necessary, and allow its author to explain and defend it in the Convention.

Mr. HAWLEY. I understand that the question now is upon reinstating the language which has been stricken out of Section 6. I wish to amend the amendment by inserting other words to come in after the words "all who may wish to be present."

Mr. JOHNSON. If the gentleman will withdraw the amendment for a moment, I will state a motion which I desire to make, and which I think will meet with general concurrence. It is for the purpose of facilitating our labors, and I believe it will result in rendering them more efficient. I am satisfied of the fact that this ordinance has not been printed as it was drafted. From some cause or other, errors have occurred, not through any fault of those who have procured its printing, or any want of appreciation of the questions involved, but from the unavoidable haste with which it has been printed, and the want of opportunity to read the proof, and make such corrections as are usual in such cases. There certainly are errors, from whatever cause they have arisen, and those errors can best be corrected by the chairman of the committee, by conferring with the author. The motion I will make, if gentlemen will withdraw their amendments, will be that the committee rise and recommend that the article be recommitted.

Mr. HAWLEY. I will withdraw my amendment.

Mr. DUNNE. I think the gentleman is mistaken about the committee; it did not originate with the committee.

Mr. COLLINS. It will make no difference to me to whom it is referred, or what amendments are adopted. I drafted the ordinance merely to facilitate our business.

Mr. JOHNSON. I will move at the proper time that it be referred to a special committee of one, if you please, to consist of the gentleman from Storey, (Mr. Collins,) with authority to make all necessary corrections. I think that will only be doing an act of justice toward the gentleman who prepared and presented the ordinance.

Mr. BANKS. I withdraw my amendment.

Mr. JOHNSON. The motion now being in order, I move that the committee rise and report the ordinance back to the Convention, with a recommendation that it be referred to a special committee of one, for correction or amendment, as he shall deem necessary.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration the ordinance concerning elections, had made some progress therein, and had instructed him to report the same to the Convention with a recommendation that it be referred to a special committee to consist of Mr Collins. Also, that the Committee of the Whole ask leave to sit again for the further consideration of said ordinance.

The report was accepted, leave to sit again was granted accordingly, and the ordinance was referred to a special committee, consisting of Mr. Collins, in accordance with the recommendation of the Committee of the Whole.

Mr. WARWICK moved (at twenty minutes past nine o'clock) that the Convention adjourn.

The PRESIDENT. I am informed that the Committee on Schedule is prepared to report a portion of the Schedule.

The question was taken on the motion to adjourn, and it was not agreed to.

THE SCHEDULE.

Mr. DUNNE, from the Committee on Schedule, presented the following report:

MR. PRESIDENT:—Your committee, to whom was referred Article XVIII, entitled Schedule, for amendment and perfection, respectfully report a portion of the same back to the Convention for adoption, amended, as follows:

ARTICLE XVIII.

SCHEDULE.

SECTION 1. That no inconvenience may arise by reason of a change from a Territorial to a permanent State Government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, including counties, towns, and cities, shall continue as if no change had taken place; and all process which may issue under the authority of the Territory of Nevada, previous to its admission into the Union as one of the United States, shall be as valid as if issued in the name of the State of Nevada.

SEC. 2. All laws of the Territory of Nevada, in force at the time of the admission of this State, not repugnant to this Constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the Legislature.

SEC. 3. All fines, penalties, or forfeitures accruing to the Territory of Nevada, or to the people of the United States in the Territory of Nevada, shall inure to the State of Nevada.

SEC. 4. All recognizances heretofore taken, or which may be taken before the change from a Territorial to a permanent State Government, shall remain valid, and shall pass to, and may be prosecuted in the name of

the State; and all bonds executed to the Governor of the Territory, or to any other officer or court in his or their official capacity or to the people of the United States in the Territory of Nevada, shall pass to the Governor, or other officer or court, and his or their successors in office, for the uses therein respectively expressed, and may be sued on, and recovery had accordingly; and all property, real, personal, or mixed, and all judgments, bonds, specialities, choses in action, claims and debts of whatsoever description, and all records and public archives of the Territory of Nevada, shall issue to and vest in the State of Nevada, and may be sued for and recovered in the same manner and to the same extent by the State of Nevada, as the same could have been by the Territory of Nevada. All criminal prosecutions and penal actions which may have arisen, or which may arise before the change from a Territorial to a State Government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the State. All offenses committed against the laws of the Territory of Nevada before the change from a Territorial to a State Government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Nevada with like effect as though such change had not taken place, and all penalties incurred shall remain the same as if this Constitution had not been adopted. All actions at law and suits in equity, and other legal proceedings, which may be pending in any of the courts of the Territory of Nevada at the time of the change from a Territorial to a State Government, may be continued and transferred to and determined by any court of the State which shall have jurisdiction of the subject matter thereof. All actions at law, and suits in equity, and all other legal proceedings, which may be pending in any of the courts of the Territory of Nevada at the time of the change from a Territorial to a State Government, shall be continued and transferred to, and may be prosecuted to judgment and execution in any court of the State which shall have jurisdiction of the subject matter thereof; and all books, papers, and records, relating to the same, shall be transferred in like manner to such court.

SEC. 5. Until otherwise provided by the Legislature, the apportionment of Senators and Assemblymen in the different counties shall be as follows: Storey County, four Senators and twelve Assemblymen; Douglas County, one Senator and two Assemblymen; Esmeralda County, two Senators and three Assemblymen; Humboldt County, one Senator and three Assemblymen; Lander County, two Senators and four Assemblymen; Lyon County, one Senator and three Assemblymen; Lyon and Churchill Counties, one Senator; Churchill County, one Assemblyman; Nye County, one Senator and one Assemblyman; Ormsby County, two Senators and three Assemblymen; Washoe and Roop Counties, two Senators and three Assemblymen.

SEC. 6. All debts and liabilities of the Territory of Nevada, lawfully incurred, and which remain unpaid at the time of the admission of this State into the Union, shall be assumed by, and become a debt of the the State of Nevada.

Your committee further report that they have stricken out Sections 5, 6, 7, 8, 9, 10 and 11, and the proviso in Section 12, of the article, as contained and presented in the old Constitution, and recommend the adoption of the preceding portion of their report. Your committee retain the remainder of the article for further consideration.

All of which is respectfully submitted.

DUNNE, Chairman *pro tem.*

Mr. DUNNE also submitted the following as a minority report from the same committee:

The undersigned, a minority of the Committee on Schedule, dissents from, and is opposed to, the adoption of Section 5, relative to the apportionment of representation.

E. F. DUNNE.

The report was accepted, and the article referred to the Committee of the Whole.

COMMITTEE OF THE WHOLE—SCHEDULE.

On motion of Mr. CHAPIN, the Convention resolved itself into Committee of the Whole, (Mr. CHAPIN in the Chair,) and took up for consideration that portion of Article XVIII, entitled "Schedule," which had just been reported.

CONTINUANCE OF RIGHTS, ACTIONS, ETC.

The SECRETARY read Section 1, as follows:

SECTION 1. That no inconvenience may arise by reason of a change from a Territorial to a permanent State Government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, including counties, towns, and cities, shall continue as if no change had taken place; and all process which may issue under the authority of the Territory of Nevada, previous to its admission into the Union as one of the United States, shall be as valid as if issued in the name of the State of Nevada.

No amendment being offered, the section, as read, was adopted.

CONTINUANCE OF TERRITORIAL LAWS.

Section 2 was read, as follows:

SEC. 2. All laws of the Territory of Nevada, in force at the time of the admission of this State, not repugnant to this Constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the Legislature.

No amendment being offered, the section, as read, was adopted.

TRANSFER OF FINES, ETC.

Section 3 was read, as follows:

SEC. 3. All fines, penalties, or forfeitures, accruing to the Territory of Nevada, or to the people of the United States in the Territory of Nevada, shall inure to the State of Nevada.

No amendment was offered, and the section, as read, was adopted:

TRANSFER OF RECORDS, ACTIONS, LEGAL PROCEEDINGS, ETC.

Section 4 was read, as follows:

SEC. 4. All recognizances heretofore taken, or which may be taken before the change from a Territorial to a permanent State Government, shall remain valid, and shall pass to, and may be prosecuted in the name of the State; and all bonds executed to the Governor of the Territory, or to any other officer or court in his or their official capacity, or to the people of the United States in the Territory of Nevada, shall pass to the Governor, or other officer or court, and his or their successors in office, for the uses therein respectively expressed, and may be sued on, and recovery had accordingly; and all property, real, personal, or mixed, and all judgments, bonds, specialities, choses in action, claims and debts of whatsoever description, and all records and public archives of the Territory of Nevada, shall issue to and vest in the State of Nevada, and may be sued for, and recovered in the same manner and to the same extent by the State of Nevada, as the same could have been by the Territory of Nevada. All criminal prosecutions and penal actions which may have arisen, or which may arise before the change from a Territorial to a State Government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the State. All offenses committed against the laws of the Territory of Nevada before the change from a Territorial to a State Government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Nevada, with like effect as

through such change had not taken place, and all proceedings thereafter shall remain the same as if the Constitution had not been adopted. All actions at law and suits in equity, and other legal proceedings, which may be pending in any of the courts of the Territory of Nevada at the time of the change from a Territorial to a State Government, may be continued and transferred to and determined by any court of the State which shall have jurisdiction of the subject matter thereof. All actions at law and suits in equity, and all other legal proceedings which may be pending in any of the courts of the Territory of Nevada, at the time of the change from a Territorial to a State Government, shall be continued and transferred to, and may be prosecuted to judgment and execution in any court of the State which shall have jurisdiction of the subject matter thereof; and all books, papers, and records, relating to the same, shall be transferred in like manner to such court.

Mr. KENNEDY. I call attention to the word "and," in the clause relating to criminal prosecutions. It says:

"All criminal prosecutions and penal actions which may have arisen, or which may arise before the change from a Territorial to a State Government, and which shall then be pending, shall be prosecuted," etc.

I think the word should be "or."

Mr. COLLINS. No; I think "and" is the proper word to use there.

Mr. WARWICK. If the gentleman attentively reads the whole sentence, I think he will find that the word "and" is perfectly proper in that place.

Mr. KENNEDY. It seems to me that a criminal case might "arise," but not be "pending."

Mr. WARWICK. The words, "or which may arise before the change from a Territorial to a State Government," are parenthetical. Strike out the parentheses, and then try it.

Mr. KENNEDY. Then you ought to embrace them within parentheses.

Mr. WARWICK. Not at all; it would read just the same, with or without, so far as "and" is concerned—

"All criminal prosecutions and penal actions which may have arisen, and which shall then be pending"—

I do not see that it makes any difference which way you read it.

Mr. KENNEDY. Very well; if others are satisfied with the reading, I am.

No amendment being offered, the section, as read, was adopted.

APPORTIONMENT.

Section 5 was read, as follows:

SEC. 5. Until otherwise provided by the Legislature, the apportionment of Senators and Assemblymen in the different counties shall be as follows: Storey County, four Senators and twelve Assemblymen; Douglas County, one Senator and two Assemblymen; Esmeralda County, two Senators and three Assemblymen; Humboldt County, one Senator and two Assemblymen; Lander County, two Senators and four Assemblymen; Lyon County, one Senator and three Assemblymen; Lyon and Churchill Counties, one Senator; Churchill County, one Assemblyman; Ormsby County, one Senator and one Assemblyman; Ormsby County, two Senators and three Assemblymen; Washoe and Roop Counties, two Senators and three Assemblymen.

Mr. DUNNE. I move to amend the apportionment so far as regards Humboldt County, by striking out "one Senator," and inserting "two Senators" instead.

Mr. KENNEDY. Where would you take the other Senator from?

Mr. DUNNE. This apportionment has been made, Mr. Chairman, upon the basis of the one adopted by the last Constitutional Convention. There have been no changes made from that, I believe, in any except two instances, and those were made solely for the purpose of giving representation to a new county, which has been organized since that Convention was held. In order to do that, without increasing the number of Senators and Assemblymen above the number we had before, which increase the committee desired to avoid, if possible, it has been found necessary that some of the counties should be made to suffer, and it appears from the report of the committee that Humboldt is one of those counties.

Mr. COLLINS. I think Storey County has been reduced in its representation by the report.

Mr. DUNNE. No, sir; Storey has the same as before.

Mr. COLLINS. Then she had not enough before.

Mr. DUNNE. Storey, and every other county, has been allowed the same, with the two exceptions to which I have alluded, and which I will now specify. It seemed proper, in the opinion of the majority of the committee, to give the new County of Nye one Senator and one Assemblyman, and in order to do that without making any increase, it was necessary to take one Senator away from one county, and one Assemblyman away from another. The committee finally determined to do this by depriving Humboldt County of one of its Senators, while Esmeralda was called upon to give up one Assemblyman.

Now if the basis of representation is to be population—and that, I believe, is required by the Enabling Act—I cannot see the justice of making that distinction against Humboldt—a county which, at the last Territorial election, polled twelve hundred and twenty-four votes. I am aware, of course, that the votes are not the basis of representation—that the only basis is population—and that therefore the county which may poll only five hundred votes, if it has a population of three thousand, is entitled to as many representatives as the county which contains three thousand voters but has no other population. I know there are some counties whose vote is small, but whose representation is perhaps justifiable by their having an amount of population sufficient to put them on a par with counties which cast a far greater number of votes. But by making a comparison between the different counties—comparing not only their votes, but also their population, as it may be deduced from the reports of the Superintendent of Public Instruction, in the absence of other official sources of information—we may be led to form some conclusions which will be more definite and reliable than mere assertions, as to what is the population of certain counties, as compared with others.

My own opinion is, that the population of Humboldt is considerably larger than that of Lyon; and I form that opinion, not alone from the fact that Humboldt polled twelve hundred and twenty-four votes last fall, but also from what I know of the number of families there are living in the different towns, and settled in the numerous rich valleys of that county. For there are many fertile valleys in Humboldt, some of which may be unknown to many members of the Convention. There is one especially, called Paradise Valley, which is estimated to contain nearly fifty thousand acres of good farming lands, fit for settlement and cultivation. And the report of the Superintendent of Public Instruction shows that there are one hundred and seventy-seven children in that county, of the ages at which, as prescribed by law, they may attend the public schools. The same report shows that in Lyon County there are two hundred and forty children within the ages required to attend school, or about that number—some odd figure, I believe, in addition. Now that difference is not very great, and the vote of Lyon County, I believe, is not as large as that of Humboldt. If I am incorrect in that, I shall be most happy to be set right.

Mr. KENNEDY. What is the gentleman's statement?

Mr. DUNNE. I said I believed the vote of Lyon County was not as large as that of Humboldt.

Mr. KENNEDY. I will state that at the election, last fall, it was larger. And that is the vote upon which the calculation was made. I examined that matter particularly, and our vote was next to that of Storey, being ahead even of Washoe.

Mr. DUNNE. In reply to that I will say, that a member of the Convention, who was also a member of the last Constitutional Convention, appeared before the Committee on Schedule, and laid before that Committee an abstract of the votes cast in the several counties at the last election; and according to that abstract, which was before the committee during its deliberations, the vote of Humboldt at the last election was twelve hundred and twenty-four, and that of Lyon was twelve hundred and twenty-one. If there be any mistake in the matter, it is in the abstract, and in the representation that was made to me on the subject, while sitting in that committee, by a gentleman who was a member of the last Constitutional Convention, and who is now in the chair. I take that abstract as the basis, and I still believe it to be correct; and it shows that the vote of Humboldt County was twelve hundred and twenty-four, and that of Lyon was twelve hundred and twenty-one, the difference, although very small, being in favor of Humboldt. I supposed that the vote of Humboldt was about twelve hundred, but I did not know the precise figures until that abstract was presented. I would also suggest to the members of the Convention, who are so anxious for the adoption of the Constitution, that so unjust a distinction against Humboldt would be but a poor recommendation for it in that county.

Mr. TAGLIABUE. I regret to call the gentleman to order, but it is getting late, and he has exhausted his time.

Mr. COLLINS. I hope that amendment will not prevail, because, while I want to see Humboldt County fairly and fully represented, I really feel that instead of increasing the representation of Humboldt, we ought to diminish that of the other counties. And, sir, I confess my very great astonishment that at this time, when retrenchment and reform are so loudly demanded, we should have a proposition brought before us to impose upon this new State a Legislature equal in number almost to that of any of the great States of the Union. I confess my astonishment that gentlemen should be willing, in this hour of financial and pecuniary distress, to saddle upon our young State the expense of maintaining a Legislature of fifty-one or fifty-two members, when thirty members, or thirty-nine at the most, would answer every practical purpose. Why should gentlemen contemplate such a thing now, when it would hardly be justifiable at any time in the future, when our material wealth may be quadrupled, and our population possibly five, or even ten times as great as at the present time? I cannot understand what should prompt such a course of policy under existing circumstances.

Mr. DUNNE. Will the gentleman allow me a word of explanation?

Mr. COLLINS. *Si, señor.*

Mr. DUNNE. *Usted habla propiamente, en español, señor.* [Laughter.] It is not from a desire of making a large body of the Legislature that I have offered my amendment, but simply because I desire that my county shall be represented equally with the others.

Mr. COLLINS. I understand the object of the gentleman as he states it. But I contend, while I do not wish to see any injustice done to any county, or any portion of the Territory, that Storey County, for example, would be as well represented with half the number here designated, as she would be with double that number. I contend that Ormsby County would be as well represented by some one of the gentlemen now representing that county on this floor, as she would be by a more numerous delegation. It is not the number of representatives that gives force and power to a delegation, or that constitutes the justice of an apportionment, but the correct idea is, that all sections shall be fully and fairly represented. I do really hope that this Convention will look this matter of the expense to be incurred fairly in the face. When we had under consideration the question whether we should pay our legislators six dollars or eight dollars a day, I voted very cheerfully for the larger sum, because I think we had better pay them more money and cut down the number, rather than increase the number, and

ten down the pay. I trust that the Convention, after looking the difficulty fairly in the face, will decide to have a less number of members of the Legislature, and at the same time will make such an apportionment as shall be equal and just.

Mr. BANKS. The views expressed by the gentleman from Storey correspond with my own on that subject.

The CHAIRMAN. The gentleman from Humboldt is out of order, and so was the gentleman who preceded him. The amendment is merely to strike out the word "one," and insert "two," and that is the only question now before the committee.

Mr. BANKS. I am happy to be corrected at any time upon a point of order, but I cannot help observing that such points are almost always suggested when I have the floor. Now my colleague from Humboldt has presented, in support of his amendment, certain statements concerning the population of our county. Those statements are strictly true; but they depend upon causes which, perhaps, some members of the committee do not understand, and therefore I wish to explain those causes.

The CHAIRMAN. That will be in order.

Mr. BANKS. The statement of my colleague is substantially that our population is larger than that of some of the counties adjoining us, in proportion to our vote. This arises from the fact that a great many families coming across the Plains stop in Humboldt County, to make that their permanent home. I suppose there is no other county in the Territory that attracts and retains so large a proportion of the overland immigration; and hence it is, that, as my colleague has said, our population is much larger in proportion to our vote, than that of some of the counties which are considerably nearer to the California line. Not only in the mining portion of the county, but also in our beautiful valleys and fertile grazing districts, those persons have found it desirable to settle, to establish their household gods, to build up permanent homes; and the prospect is that the population of the county will continue to increase in that manner, so that in all probability by the time the next apportionment is made, the excess of our population over our vote, as compared with other counties, will be even larger than now.

Mr. JOHNSON. I did not precisely understand what the point of order was upon which the Chair decided the gentleman from Humboldt to be out of order.

The CHAIRMAN. It was this: The gentleman from Storey (Mr. Collins) had been discussing the propriety of cutting down the number of the Legislature, establishing a new basis of apportionment; and the Chair understood the gentleman from Humboldt (Mr. Banks) to take up the discussion of the same question, which, upon the consideration of the amendment, really was not in order, being foreign to the question.

Mr. BANKS. Not at all. I did not propose to discuss that question at all.

The CHAIRMAN. Then the Chair begs the gentleman's pardon.

Mr. JOHNSON. The amendment proposed involves the question of an increase of the number of members beyond that reported by the Committee on Schedule. I submit, therefore, that the question before the committee involves the propriety of either increasing or diminishing the number, and hence the discussion of that question, especially when we are in Committee of the Whole, I judge to be entirely in order.

The CHAIRMAN. The gentleman will proceed.

Mr. JOHNSON. I would like to call the attention of the gentleman from Storey, (Mr. Collins,) to what I am about to say. Assuming that it is legitimate to discuss at this time the subject of the number of the members of our State Legislature, and I so regard it, I propose only to reiterate what I have said in the committee, that I thought it advisable to have the larger, rather than the smaller number of representatives, which some gentleman had suggested. I have nothing to say further at this time, however. In regard to the proportion of the representation to be allowed to Humboldt County, except this: that if we add one Senator for that county, we shall have a Senate of eighteen members, and an Assembly of only thirty-five; whereas, the generally received idea is, that the number of Assemblymen should be just double that of the Senators—and I believe furthermore that there is a clause in another article of our Constitution which establishes that as the proportion.

Mr. DUNNE. I suggest, then, that instead of robbing Peter to pay Paul, we should give back not only the Senator to Humboldt, but also the Assemblyman to Esmeralda, thus making the relative numbers exactly right—eighteen and thirty-six.

Mr. JOHNSON. As to this matter of reducing the number of members, I wish to add that I was somewhat surprised at the course of my friend from Storey, (Mr. Collins,) for, if I mistake not, he was in favor of paying the members of the Legislature liberally, and aided by his vote in increasing the per diem from the rate which was first reported, although now he wishes to diminish the number on account of the expense to the State of supporting large legislative bodies. The gentleman bows assent, from which I infer that I have not misstated his position. But I observe that the reduction in number which he advocates, with the increased pay, would not have the effect of reducing the expense below what it would be with the larger number and the smaller per diem.

Mr. COLLINS. I have all the figures.

Mr. JOHNSON. So have I. When the question of per diem was under consideration, a motion was made to strike out six dollars and insert eight, and the majority deemed it proper

to make that amendment against my protestations. I have nothing to offer in regard to that action of the Convention, only this: that I do not wish to hear so much talking about economy, unless gentlemen are willing to practice it—and I hope no one will understand this remark as being made in any unkind spirit.

Now, sir, I have made a hasty calculation in regard to how much additional burden has been placed upon this wo-begone State Treasury, by that one amendment. Taking the number of members reported by the Committee on Schedule, in the section under consideration, as the basis, I estimate that the increased expense will be, for the first session of the Legislature, $9,180, and for the next session $6,120. And on the supposition that we are to have annual sessions for three years, the additional expenditure in that time will be $21,420—an average of over seven thousand dollars a year. That amount of annual expenditure might very well have been saved to the State, if the gentleman from Storey, and other members, had concurred with the counsels of myself and others in that respect.

And for one, sir, I would prefer to have the larger representation, and pay the members less, rather than the smaller representation, and pay them more. I conceive that one of the material safeguards of the people, is a numerous representation in the Legislature. There is then less danger of passing what has been so frequently and justly characterized as "thieving bills." It will be infinitely more difficult, with a numerous representation in the Legislature, to enact bills of that character, than it would be with a small representation. For that, if for no other reason, I am in favor of the larger representation; and I would very much prefer to cut down the pay, even considerably lower than was at first proposed, rather than to decrease the number. I think the people would be benefited by adopting that course far more than by reducing the number of members, and increasing their pay.

So far as this amendment involves the giving of another Senator to Humboldt County, I have no means of ascertaining exactly the population of that county. I thought in the committee, however, as I do now, that the apportionment, as agreed upon then, was approximately correct. There are other gentlemen, however, who have more accurate knowledge and intimate acquaintance with that subject, and I hope they will enlighten those of us who have not the same means of information.

Mr. KENNEDY. I desire to propose an amendment, which is rather of the nature, however, of a verbal correction. It is simply to add the word "jointly," after the words "Lyon and Churchill Counties." It is hardly in order, I suppose, but I will offer it, as I think there can be no objection.

The CHAIRMAN. It should be a separate amendment, and there is another subject now before the committee.

Mr. MASON. I move to amend the amendment offered by the gentleman from Humboldt, by adding another Assemblyman to Esmeralda County, so as to read, "Esmeralda County, two Senators and four Assemblymen."

Mr. DUNNE. I accept the amendment.

Mr. MASON. I consider that in this apportionment, Esmeralda County is unjustly treated. Sir, we, who come here from that county, represent one of the largest and most important counties in the Territory; a county vast in extent, and embracing wealth—well, I do not know exactly how much. [Merriment.] Besides our rich mining region, we have a magnificent farming country. Our population is increasing, and our resources are being developed. I will not occupy the time, but will only say, that to strike out one of our Assemblymen, as the original section proposes to do, it seems to me, would be an act of the grossest injustice to the county of Esmeralda.

Mr. DUNNE. The amendment offered by the gentleman from Esmeralda, and which I have accepted, obviates the objection which was suggested by the gentleman from Ormsby, (Mr. Johnson,) that by adding one Senator to Humboldt we should be making the two houses of the Legislature disproportionate in number, and thereby infringing a constitutional provision. The amendment, as now modified, will make the Senate consist of eighteen members, and the Assembly of exactly double that number, to wit, thirty-six; so that the numbers of the two branches will be relatively correct. At the same time it restores what has been taken away from both Humboldt and Esmeralda Counties. If the apportionment on the old basis is just, it ought to remain, and I do not think we can adopt a better one.

Mr. FRIZELL. I have an amendment which I would like to read for information. It is based upon the idea that the Senators should represent more especially the counties—the localities from which they are chosen—and not the people only. My amendment, therefore, proposes to give to each county one Senator, with the exception of Storey County.

Mr. DUNNE. Oh, I think Storey should have a Senator, too. [Merriment.]

Mr. FRIZELL. I said one Senator for each county except Storey, but my modesty forbade me to mention the number which I think Storey County ought to have. [Laughter.]

Mr. WARWICK. Do not let modesty stand in the way.

Mr. FRIZELL. As to the number of Senators, I think that would be the proper principle to adopt, and then it would be easy to settle the question of apportionment so far as relates to that branch. Take, for example, the United States Senate. There each Senator represents a locality, namely the State, rather than the people of the State; and in like manner our Senators might represent their respective counties. The largest State in the Union sends but two Senators to the United States Senate, and

every small State is entitled to be represented three by the same number. My reason for suggesting this amendment is, that under the present plan it appears to be impossible to do exact justice to every county. To some counties it is proposed to give two Senators, whilst to others, with about the same population—and probably in some instances the difference will not exceed forty or fifty—but one Senator is allowed. That is manifest injustice, and if my proposition shall meet with favor, it will remove that injustice by serving all the counties alike.

Mr. COLLINS. I see no difficulty in the way of making an equitable apportionment, but at the same time it occurs to me, as I have already stated, that the representation should be cut down very materially, throughout. We can fix upon a number as the Senatorial basis, and then in the case of any county which has not sufficient population to be entitled to send one Senator, let us create a Senatorial District, by uniting that with some adjoining county. Let us agree upon the number of Senators we will have—say thirteen, for example—then divide them among the counties as far as practicable; and when two counties come together, neither of which is entitled by population to a Senator, let us unite them into one Senatorial District. It is a matter which may be easily adjusted.

But what I wish more strenuously to insist upon, is the importance of reducing the number. Not only will that effect a diminution of the expense, but it will increase the rapidity of transacting the legislative business of the State. Here it is proposed, for instance, that Storey County shall have the enormous representation of sixteen members, including both houses; but I will ask what complication of difficulties exists that is going to prevent eight men from representing that county, and as clearly and forcibly maintaining, advocating, and defending all its interests, as the larger number of sixteen? I ask if the same principle will not hold good in regard to any other county? Some of them are represented in this Convention by but one individual; and judging from the talent they have sent here, I am of opinion that any one of them might be represented by one man, or two men, as the case may be, as well as by three or four. For it is not alone the number of any delegation that gives it influence and power, but also, and to a greater degree, the intelligence and ability of the members composing that delegation. Therefore, I contend that the smaller the number of representatives the better, so long as we do not leave large sections of country wholly unrepresented.

Why, sir, the representation which we have here, would give New York, upon the same basis, a Legislature of several hundred members, but in that State I know that a very large extent of territory often has to be included, in order to obtain population enough for a single representative, and two or three, or even as many as four counties, are sometimes united in a single Senatorial District. Nevertheless, I hold that New York is a pretty good State to copy from.

Take Massachusetts as an example, also. It is notorious that when the Massachusetts House of Representatives was an exceedingly numerous body—containing upwards of three hundred members, I believe, in some years—there was great embarrassment and delay of business, in consequence of the unwieldy size of the body. And if gentlemen will look at the State Constitutions which have been recently framed, they will find that small delegations have been the order of the day, almost invariably. Let us follow those examples. Give us a chance to grow and expand, and when our population and resources will warrant it, we can increase our Legislature to the maximum number of seventy-five, which has already been fixed upon. But in the mean time, in the days of our infancy, let us establish a much smaller number. Thirty, thirty-six, or thirty-nine at most, is as large a number as we ought to afford, with our present population.

Mr. MASON. I would not perhaps object so much to reducing the number throughout, but under the present circumstances—and I wish to cure one disease at a time—according to the apportionment which we now have under consideration, I think if we give Esmeralda one more Assemblyman, and Humboldt one more Senator, it will be about a fair and equal apportionment.

But, sir, I know something about the ability and talent of the Legislature of New York, to which the gentleman from Storey has referred as an example, and while I concede that there have been able men in that body, yet at the same time I have known of representatives of that State, of the Rip Van Winkle stamp—men who seemed actually to have slept for as long a period as Washington Irving relates of that celebrated New Yorker. No doubt New York has produced some great men, but it has had its proportion of fools also.

Mr. COLLINS. The gentleman's head is clear on that subject. [Laughter.]

Mr. WARWICK. I will state that under the present basis of representation in California, Sacramento, which has a population fully as large as that of Storey County, is represented in the Legislature by only seven members, and I think that number is quite sufficient. It seems to me that it would be full as well to cut down the number, as suggested by the gentleman from Storey, (Mr. Collins.) I am not in favor of making an increase, so long as the ratio is equal, and if the same reduction could be made throughout the State, I would have no objection to Lander County being represented by one Senator and two Assemblymen, instead of two Senators and four Assemblymen. While retrenchment is the order of the day, I am rather inclined to favor that proposition.

Mr. COLLINS. I will move now, if it is in order, that the Committee of the Whole recom-

mend that this whole question of apportionment be referred to a special committee of three, with instructions to report such an apportionment that the number of the Legislature in both branches shall not exceed thirty-nine members.

Mr. WETHERILL. I suggest that it should be a committee of one from each county.

Mr. COLLINS. Very well; I like that better.

Mr. BANKS. I have no special objection to a reference, if it is deemed necessary, but the committee which has already had the subject under consideration, is familiar with all the figures, and that, it appears to me, is the best committee, and besides, it is a standing committee. I will move its reference to the Committee on Schedule.

Mr. COLLINS. I will accept that; by all means, let it go to that committee. I made the motion for a special committee only because I thought the Committee on Schedule already had so much labor on hand that it would be almost an imposition to send the matter back to that committee.

Mr. JOHNSON. I trust the proposed reference will not be made. We have devoted many hours to the consideration of this subject already, and if we re-open it, the same labor will have to be gone over again. We shall not only be compelled to consider the matter again in committee, but when it is reported back we shall encounter the same objections in the Convention that we have already heard. The labors of that committee have been extremely arduous. Various propositions have been suggested and compromises offered, and new calculations have had to be made almost daily. For one, I am weary of it, and I think we can understand the matter just as well now, as we should after recommitting it and having another report.

The only question which we are called upon now to decide, is whether we shall have a Legislature consisting of fifty-four members, or of some smaller number. As I have already stated, I am an advocate of the larger number, as I believe that thereby the interests of the people will be more effectually subserved, and their rights more securely guarded. By this apportionment, ten votes in the Senate, and nineteen in the lower House, will be needed to pass any bill; but if we adopt the smaller number suggested, the votes of seven Senators and fourteen Assemblymen will suffice. Such is the difference between the two propositions. If there shall be any thieving going on—and we may expect that there will be, although we put all the checks we can conceive of or imagine, into the Constitution—the people will be safer with a large representation than with a small one. Do what we may, there will undoubtedly be thieving bills before the Legislature of our new State, and a great abundance of them.

I hope we shall adopt the amendment proposed by the gentleman from Humboldt, (Mr. Dunne,) and then pass the section. It is true that his amendment reduces relatively the representation of the other counties somewhat, but that is a matter of such slight moment that I care nothing about it. I am in favor of the larger representation.

The CHAIRMAN. The question is upon the proposition to recommit the section, with instructions to reduce the number to thirty-nine.

Mr. DUNNE. I hope that will not be done, for the reason that the committee has already worked and wrangled over this matter sufficiently, and I believe this is the only conclusion to which it can come, that would give anything like general satisfaction. After all the labor that has been performed by that committee, and the thorough consideration it has given to this subject, I think that any gentleman who wishes to modify or remodel the whole report ought to be required to submit his proposition to the Convention, complete, together with a scale of apportionment, as it would stand with such reduction or change, in order that we may all see how it would work. That course is open to any member, at any time before the final vote, and if any one can devise a more satisfactory apportionment than the committee has presented, it will no doubt meet with such consideration as it deserves. Let the amendment, which applies to the apportionment now presented, be determined upon, one way or the other, here and now; but before the whole subject is reopened, before any one is permitted to overturn the whole apportionment, let him present some basis upon which his proposition can rest, so that we can all understand its operation; and let him not ask, without offering anything more than mere generalities, to reopen the subject so that we will have the whole matter to go over again.

Mr. MASON. I heartily concur in the views which have been presented, and so ably advocated, by the gentleman from Ormsby, (Mr. Johnson.) I agree with him, that if ever we are going to need a large legislative body it will be at the commencement of the organization of our State. We have a complication of interests to be represented, and by providing for large delegations we shall enable the people of the various counties to select men who will represent all their diverse and varied interests, much better than if the people were compelled to concentrate their choice upon fewer individuals. And I consider that it will be no disadvantage to make the small enlargement contemplated by this amendment, in order to do justice to those remote counties; for, remote as they are, in a very short time they will make their mark in our new State. I hope that the aggregate number of the Legislature will be increased to fifty-four, as proposed by this amendment, in order that justice may be done.

Mr. COLLINS. I will withdraw my motion,

if there is no disposition to recommit the section.

The CHAIRMAN. The Chair will suggest that if the question is allowed to be put, the gentleman can see the disposition of the committee.

Mr. COLLINS. I will withdraw it with the permission of the committee. ["Leave, leave."]

No objection being made, the motion was withdrawn.

The CHAIRMAN. The question now is on the amendment proposed by the gentleman from Humboldt, (Mr. Dunne,) as subsequently modified, amending the apportionment for Humboldt and Esmeralda, so as to read: "Esmeralda County, two Senators and four Assemblymen; Humboldt County, two Senators and three Assemblymen."

The question was taken, and the amendment was adopted.

The question was then taken on the adoption of the section as amended, and it was adopted.

TERRITORIAL DEBTS AND LIABILITIES.

Section 6 was read, as follows:

SEC. 6. All debts and liabilities of the Territory of Nevada, lawfully incurred, and which remain unpaid at the time of the admission of this State into the Union, shall be assumed by, and become the debt of the State of Nevada.

No amendment being offered, the section, as read, was adopted.

Mr. DUNNE. That is as far as the report of the Committee on Schedule extends. Now I move that the committee rise, report progress, and ask leave to sit again.

Mr. KENNEDY. I think we had better report the article back, as far we have gone, and order it to engrossment, so as to get along as fast as we can.

Mr. DUNNE. Very well; I will make that motion.

The question was taken, and the motion was agreed to, and the committee accordingly rose.

IN CONVENTION.

The PRESIDENT having resumed the chair, The CHAIRMAN reported that the Committee of the Whole had had under consideration the first six sections of Article XVIII, entitled Schedule, had made some amendments thereto, in which he was instructed to ask the concurrence of the Convention, and recommended that the sections be passed with such amendments.

The report was accepted, the several amendments made in Committee of the Whole were agreed to, and the sections reported were ordered engrossed for a third reading.

On motion of Mr. WARWICK, at twenty minutes past ten o'clock, P. M., the Convention adjourned.

EIGHTEENTH DAY.

CARSON, July 23, 1864.

The Convention met at nine o'clock, and was called to order by the President.

The roll was called, and all the members responded, except the following: Messrs. Ball, Earl, Fitch, Haines, Hovey, Hudson, Jones, Kinkead, Lockwood, McClinton, Morse, Parker, Stanyarne, Toner, Wellington, and Williams. Present, 23; absent, 16.

Prayer was offered by the Rev. Mr. VREDER.

The journal of yesterday was read and approved.

LEAVE OF ABSENCE.

Mr. KENNEDY. I ask leave of absence for to-day for Mr. Hudson.

No objection being made, leave of absence for one day was granted to Mr. Hudson.

Mr. BROSNAN. I ask leave of absence also for Mr. Hovey, who has been constrained to go home this morning. I ask that he be granted leave of absence until Monday.

Mr. COLLINS. I also ask leave of absence for Mr. Earl.

The PRESIDENT. Before we grant leave of absence to these gentlemen, we had better ascertain how many members we can have in attendance.

Mr. WARWICK. If we grant them leave of absence, we cannot send the Sergeant-at-Arms after them, in case we find the Convention without a quorum. The body will then fall by its own weight, like any other heavy body.

Mr. BROSNAN. We can spare Mr. Hovey, as my colleague, Mr. DeLong, is present.

Mr. MASON. I wish to ask leave of absence for the gentleman whom the *Union* calls my distinguished colleague, Mr. McClinton.

Mr. DUNNE. I shall have to object to granting leave of absence to Mr. Earl.

Mr. COLLINS. Then I move that he be granted leave of absence for one day.

Mr. DUNNE. I hope the Convention will not grant leave of absence to any more members, particularly those who live close around the Capital. I notice that several gentlemen have not been in attendance very regularly since certain interesting questions have been disposed of, and I think we ought not in this manner to deprive ourselves of the power of compelling the attendance of a quorum in case we should find it necessary to do so.

The question was taken on the motion of Mr. Collins, and, on a division, the vote was—ayes, 11; noes 4. So leave of absence for one day was granted to Mr. Earl.

[Mr. CRAWFORD in the chair.]

The question was stated on granting leave of absence for this day to Mr. McClinton.

Mr. KENNEDY. I thought he had indefinite leave.

Mr. CHAPIN. But that was annulled by his being present afterwards.

Mr. DeLONG. Oh, no! That does not annul it.

Mr. MASON. I think the granting of indefinite leave of absence once may be sufficient.

Mr. WARWICK. No, sir. I think he had leave only for one day.

Mr. STURTEVANT. I remember distinctly that he was granted leave of absence yesterday.

Mr. JOHNSON. But he only claimed it for yesterday. If the Secretary will refer to the journal, I believe he will find it so stated.

The SECRETARY read as follows:

"Mr. MASON asked leave of absence for Mr. McClinton for one day. Granted."

The question was taken, and leave of absence for one day was granted to Mr. McClinton.

ADJOURNMENT OVER.

Mr. BRADY. I move that this Convention adjourn to-day at twelve o'clock, M., to meet on Monday, at two o'clock, P. M. My reason is, that we cannot possibly finish our labors this week, as we had expected, and I would like an opportunity to go home, as many others would. If I must come here on Monday, I had about as lief sit all the week. If the motion does not prevail, I shall ask leave of absence for myself till Monday afternoon.

The PRESIDENT *pro tem.* There is not a quorum, only nineteen members being present.

Mr. DELONG. I move a call of the House.

The PRESIDENT *pro tem.* Another member has come in, making a quorum.

The question was taken on the motion for a call of the House, and it was not agreed to.

The question was stated on the motion of Mr. Brady, that when the Convention adjourn at twelve o'clock to-day, it adjourn to meet on Monday at two o'clock, P. M.

Mr. DUNNE. I move to lay that motion on the table.

Mr. CHAPIN. I hope that will be done, for I want the Convention to work to-day.

Mr. DUNNE. That is the object of my motion.

The question was taken, and the motion was laid on the table.

LEAVE OF ABSENCE—AGAIN.

Mr. BANKS. I move that the indefinite leave of absence heretofore granted to Mr. DeLong be revoked.

Mr. DELONG. I object. [Laughter.] I rise to a point of order, namely: that the Convention having once granted indefinite leave, it cannot be revoked without the consent of the member to whom it was granted. ["Question! Question!"] Question on the point of order. [Merriment.]

The PRESIDENT *pro tem.* Not being thoroughly familiar with Jefferson's Manual, I will ask the President to take the chair.

[The PRESIDENT in the chair.]

The PRESIDENT. The Chair rules that the motion is out of order. The only way to reach the matter is by a reconsideration.

Mr. BANKS. Then I move that the vote by which indefinite leave of absence was granted to Mr. DeLong be reconsidered.

The question was taken, and the motion was agreed to.

The question recurred on granting indefinite leave of absence to Mr. DeLong, and the Convention refused.

Mr. BRADY. Now I ask leave of absence until two o'clock, P. M., on Monday.

The question was taken, and on a division the vote was—ayes, 11; noes, 9. So the Convention granted leave of absence to Mr. Brady until Monday, at two o'clock, P. M.

JUDICIAL DEPARTMENT.

Mr. CHAPIN. I learn that the article on the Judicial Department is published in the *Virginia Union* of this morning. I therefore move that the Sergeant-at-Arms go to Mr. Fox, and procure a number of copies.

Mr. STURTEVANT. Has he any funds? I suggest that each member contribute a quarter, and there will be less difficulty in getting it.

Mr. LOCKWOOD. I am a subscriber, as several others are. I hope the Sergeant-at-Arms will bring up my paper, as I have not time to go after it.

The PRESIDENT. The order of business at present, is "Reports of Committees." The gentleman's motion is therefore not now in order.

Mr. CROSMAN. The Committee on Engrossment have several bills in their possession, which they will be prepared to report in the afternoon.

The PRESIDENT. Motions and resolutions are next in order.

COUNTY COURTS.

Mr. CROSMAN. For the purpose of ascertaining the sense of the Convention, believing that to be the quickest and easiest way to arrive at a conclusion, I offer the following resolution:

Resolved, That it is the sense of this Convention that the County Courts be abolished in all the counties, except Storey.

My reason for offering this resolution is, that there are several sections in the article on Judicial Department, as reported by the Committee on the Judiciary, that will need changing, if it shall not be the sense of the Convention to sustain the report of the committee, as proposed by this resolution.

The PRESIDENT. I think the gentleman is mistaken in regard to the report of the Committee on the Judiciary. That report only contemplates the establishment of a County Court in Storey County, but with power in the Legislature to create such courts in other counties, whenever it may be deemed expedient.

Mr. CROSMAN. I so understand it, and the object of the resolution is to declare that to be the sense of the Convention. I wish to ascertain whether the determination of the Convention is to sustain the report in that particular, or not.

The PRESIDENT. My recollection is, that there is nothing contained in the report which would be inimical to the gentleman's resolution.

Mr. CROSMAN. I am aware of it, but I think this is the simplest and shortest way to arrive

at a definite conclusion. It may supersede the necessity of protracted discussions upon amendments.

Mr. BANKS. Is it the design of the resolution to declare that we will have no County Courts?

Mr. CROSMAN. It is not. It is simply to arrive at the sense of the Convention, in order that we may act harmoniously, and save time. I am ready myself to indorse the report of the committee, and all I am seeking for is to get an expression of the Convention.

The PRESIDENT. The Chair will suggest that perhaps it would be more proper to wait until the report comes up. It may be reached presently, and then the gentleman can obtain the sense of the Convention, equally as well.

Mr. CROSMAN. I will withdraw the resolution, but I thought it might save time. That was my only object.

Mr. DeLONG. I disagreed with my colleague (Mr. Brosnan) on this subject, but was overruled in the committee. I thought it would be better to make the system harmonious throughout.

IMPEACHMENT AND REMOVAL.

The Convention proceeded to the consideration of business on the general file, and took up, as the first business in order, Article VII, entitled Impeachment and Removal from Office.

The article was read a third time, as engrossed, as follows:

ARTICLE VII.

IMPEACHMENT AND REMOVAL FROM OFFICE.

SECTION 1. The Assembly shall have the sole power of impeaching, but a majority of all the members elected must concur in an impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be upon oath or affirmation, to do justice according to law and evidence. The Chief Justice of the Supreme Court shall preside over the Senate while sitting to try the Governor upon impeachment. No person shall be convicted without the concurrence of two-thirds of the Senators elected.

SEC. 2. The Governor and other State and judicial officers, except Justices of the Peace, under this State Government, shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust under this State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

SEC. 3. For any reasonable cause, to be entered on the journals of each House, which may or may not be sufficient grounds for impeachment, the Chief Justice and Associate Justices of the Supreme Court and Judges of the District and County Courts shall be removed from office on the vote of two-thirds of the members elected to each branch of the Legislature, and the Justice or Judge complained of shall be served with a copy of the complaint against him, and shall have an opportunity of being heard in person, or by counsel, in his defense; provided, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

SEC. 4. Provision shall be made by law for the removal from office of any civil officer, other than those in this article previously specified, for malfeasance or misfeasance in the performance of his duties.

The question was stated on the final passage of the article as read.

Mr. BROSNAN. I observe that in Section 1 it is stated that "a majority of all the members must concur in an impeachment." That, it occurs to me, is a more positive term than should be employed in that connection.

Mr. DUNNE. They are sworn to support the Constitution, and of course, according to that, they are bound to concur.

The PRESIDENT. The article can be amended at this time by unanimous consent.

Mr. BROSNAN. I would propose, then, to amend that clause so that it will read:

"The concurrence of a majority of all the members elected shall be necessary to an impeachment."

By unanimous consent of the Convention, the amendment suggested was adopted.

The question being on the final passage of the article, as amended, the yeas and nays were taken, and the vote was—yeas, 23; nays, none—as follows:

Yeas—Messrs. Banks, Beiler, Brady, Brosnan, Chapin, Collins, Crawford, Crosman, Dunne, Friedl, Folsom, Gibson, Hawley, Kennedy, Lockwood, Mason, Murdock, Proctor, Sturtevant, Tagliabue, Warwick, Wetherill, and Mr. President—23.

Nays—None.

So the article was passed.

SALARIES.

The Convention next took up in its order Article XI, entitled Salaries and Appropriations.

The article was read a third time, as follows:

ARTICLE XI.

SALARIES AND APPROPRIATIONS.

SECTION 1. For the first term of office succeeding the formation of a State Government, the salary of the Governor shall be four thousand dollars per annum; the salary of the Secretary of State shall be three thousand six hundred dollars per annum; the salary of the State Controller shall be three thousand six hundred dollars per annum; the salary of the State Treasurer shall be three thousand six hundred dollars per annum; the salary of the Surveyor-General shall be one thousand dollars per annum; the salary of the Attorney-General shall be two thousand five hundred dollars per annum; the salary of the Superintendent of Public Instruction shall be two thousand dollars per annum; the salary of each Judge of the Supreme Court shall be seven thousand dollars per annum. The salaries of the foregoing officers shall be paid quarterly, out of the State Treasury. The pay of State Senators and members of the Assembly shall be eight dollars for each day of actual service, and forty cents per mile for mileage, going to and returning from the place of meeting. No officer mentioned in this section shall receive any fees or perquisites to his own use for the performance of any duty connected with his office, or for the performance of any additional duty imposed upon him by law.

Mr. BROSNAN. I think this article on Salaries ought not to be embodied in the Constitution proper, because it is, so to speak, ephemeral in its nature. It is to have no effect after the expiration of two years, and yet it is here made a distinct and separate article of the Constitution. I suggest that it would be more proper to refer it to the Committee on Arrange-

ment, with a recommendation that it be given a place in the Miscellaneous Article, or the Schedule. Perhaps the latter would be more appropriate.

The PRESIDENT. A motion would be in order to strike out and refer the article, with instructions to incorporate it as a separate section in the Schedule. Such action may be had by unanimous consent.

Mr. BROSNAN. I will move that the Committee on Arrangement be instructed to transfer it, as a section simply, to the Schedule. There is only one section, and as it is to operate only for two years, it ought not to be embodied among the permanent features of the Constitution.

The PRESIDENT. The gentleman will please reduce his motion to writing, for the convenience of the Secretary.

Mr. BROSNAN submitted the following:

Resolved, That Article XI, entitled Salaries and Appropriations, be transformed to a simple section, and that the same be transferred to and incorporated in the article entitled Schedule, by the Committee on Phraseology and Arrangement.

The question was taken, and the resolution was adopted.

JUDICIAL DEPARTMENT.

Mr. CROSMAN. I move that the Convention now resolve itself into Committee of the Whole, for the consideration of Article VI, entitled Judicial Department.

Mr. BROSNAN. I think it would be well, perhaps, first to ascertain the sense of the Convention upon certain features of the article. I see, however, that as it is printed in the *Virginia Union* here, it is a little different from the report as it was handed in by the Committee on the Judiciary.

The PRESIDENT. The Chair will suggest that the matter might as well be considered in Committee of the Whole.

Mr. BROSNAN. Very well.

The question was taken on Mr. Crosman's motion, and it was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. CROSMAN in the chair,) and proceeded to the consideration of Article VI, entitled Judicial Department.

NUMBER OF SUPREME COURT JUDGES.

Mr. BROSNAN. As I was about to state, possibly we can expedite business, if we come to an understanding in the first place, by taking a direct vote on one or two questions. This report, however, as it is printed in the newspaper, provides in one place for a Supreme Court to consist of five judges, whereas the report, as actually made by the Judiciary Committee, only provides for three Supreme Court Judges. But there seems to be a pretty strong sentiment in favor of having five judges, at least for the first few years, and I would submit to the consideration of the Committee whether it would not be best to take a vote on that subject at once. That will determine the question, and perhaps obviate the necessity of much discussion hereafter, as we progress, and also the trouble of modifying the various sections so as to suit the number of three judges, or five judges, as the case may be.

The CHAIRMAN. Does the gentleman make a motion?

Mr. BROSNAN. I move that the Supreme Court shall consist of five judges, instead of three.

Mr. COLLINS. Before the vote is taken on that, I would like to be informed if any provision has been made by this report for a court fee, or docket fee, by which the salaries of the Supreme Court Judges are to be paid, or at least in part.

Mr. BROSNAN. I believe there is such a provision.

Mr. COLLINS. Then I am in favor of five judges.

Mr. JOHNSON. In part, I agree with the report of the committee, as to the provision for a court fee. That is, I am willing that the Legislature shall have the power to prescribe such a fee, but I do not consent to the adoption of a compulsory provision, absolutely requiring the Legislature to do this. Circumstances may be such, in the earlier portion of our history as a State, as to justify the Legislature in requiring it, but at a later period it may not be necessary or justifiable. I look upon the imposition of a court fee as wrong in principle, and a measure that should only be resorted to in extreme cases. Hence, I am willing to concur so far as this, to leave the matter in such form that the Legislature may have power to prescribe a court fee. But, in any event, whether that is done or not, I think the advantage of having five judges, instead of three, is so much greater as to outweigh the consideration of increased expenditure, and I shall support the proposition.

Mr. BANKS. I am opposed to this motion. I have heard no sufficient reason urged in favor of having five judges, instead of three, or, at least, no very substantial reason, except that it would be easier to influence improperly a bench composed of three men than a bench composed of five. That is the most tangible argument that I have yet heard offered in favor of that proposition. I have also heard it suggested that the labor of the Supreme bench will be very considerable, and that it can be performed more easily and promptly by five than by three judges.

In regard to the first proposition, that it is more easy to corrupt, or improperly influence three men than five men, I have this to say, that so far as my observation extends, small bodies are generally most pure. In legislative bodies it is generally less easy to influence improperly the Senate, which is the smaller body, than it is the Assembly, which is the larger body. I

know that in the California Legislature, it became a very common expression among those who were supposed to be endeavoring to influence legislation improperly, that if such or such a thing could once be got through the Senate, it would "go through the House, kiting." So far as legislative bodies are concerned, then, I have never seen this proposition verified, but on the contrary, I have found that small bodies of men have been less inclined to be influenced improperly than large ones. The responsibility is more divided in large than in small bodies, and the public eye is less definitely fixed upon individuals. The consequence is, that men in large bodies enjoy a greater degree of immunity from public censure than in small bodies.

But I do not place very much reliance upon arguments based on the corruptibility, or the extreme corruptibility, at all events, of judicial officers. And as I have not forgotten that the five minutes rule is impending over me, I will now leave that matter, in order to refer briefly to the other argument, namely, the propriety of having the larger number of judges on account of the amount of labor to be performed. Now if we provide for three judges, they will be selected from the best quality of talent we have; and it is well understood that in judicial matters work is performed rapidly or otherwise, according to the capacity and legal learning of the men who are engaged in it; and in my judgment, if we provide for five judges, it will be very difficult for us to find, in our community, that number of judges who are properly fitted and willing to perform the duties devolving upon judges of the Supreme Court. We shall find more practical knowledge and legal learning on a bench composed of three men than we should on one composed of five; for if we have five, in all probability there will be one or two blockheads among them, while if the selection is confined to three, there will be a greater probability of our securing not only a pure but an able Supreme judiciary.

Mr. JOHNSON. I would have preferred to entrust the advocacy of this proposition to others. But on a previous occasion, when, as I recollect, the gentleman from Humboldt (Mr. Banks) was present, I took occasion to refer to this subject, and to present, very briefly, reasons why in my opinion we ought to provide for five rather than three judges, to constitute our Supreme Court. And what I shall now say, will be but a repetition of the reasons then presented.

I desire to discard as much as possible the idea of the corruptibility of judges, for I would be indisposed to make a suggestion of such character in this Convention, lest it might seem to betoken an acquiescence in, or endorsement on my part of certain charges which have lately appeared in the newspapers, more especially within the last few days. On that subject I do not propose to speak. I do not propose myself as the defender of the Supreme Court, nor of any judicial officer; neither do I propose to become a participant in any charges of the character of those which have been made public. But the important matter is this—and I hope I may secure the attention of the gentleman from Humboldt—

Mr. BANKS. I beg pardon. My attention was withdrawn but for a moment.

Mr. JOHNSON. The important point is this—not a question whether two judges or three judges can be the more easily purchased; but that a character of stability and fixedness should be given to the decisions of our Supreme Court. And that end, I believe, can more certainly be attained by placing five judges on the bench than by limiting the number to three. With five judges, we have in our decisions the aggregated experience, wisdom, and judicial learning of five men, as against that of three, contemplated by the committee's report; and the people generally, and the bar particularly, would certainly be more disposed to acquiesce in the final judgment of a Court composed of five members than in that of a Court constituted of but three.

I submit that the judicial history of California affords an illustration which is in point here. It is understood that until within a few months past, the Supreme Court of that State was constituted of but three judges, but it has been found necessary to increase the number. I think if there had been five judges on that bench from the commencement, instead of three, the people of California would have been spared the spectacle of so great a number of reversed decisions and conflicting opinions of the Supreme Court. They have had in California numerous cases like this: A decision is rendered, with one judge dissenting; then in a short time one of the judges in the majority goes out, the dissenter remains, and a new judge comes in and takes his place; then, upon a rehearing, or the same questions being raised in a new case, the judge who was at first in the minority finds himself in the majority; and thus important questions have been decided, and the decisions within a few months thereafter overruled and reversed.

Under such a state of things, men may invest their money in some enterprise, risking their all upon the decisions of the Courts, as announced by the highest tribunal of the State, and after the lapse of a few months, or perhaps a year at the utmost, they may find themselves occupying a position of direct antagonism to that which they held by the previous decision, and the result may be their ruin. And our own experience shows that fortunes have been lost in consequence of litigants depending on the stability of decisions of a Court so constituted. If we provide for five judges on the Supreme bench, those opportunities for reversal of decisions are not so readily presented.

This evil is of comparatively little consequence, so far as it refers to and affects only individual litigants; but even then it is better

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for the public at large that the decisions of the Courts should be permanent, and there are perhaps but very few cases decided where the public generally have not, directly or remotely, some degree of interest in the question. Therefore I insist that the public interest is better subserved, in all cases, by making such provisions that the decisions of the Courts cannot be readily reversed. If we provide for five judges, frequent changes in the judgments and opinions of the court are not so liable to occur, and the community and the bar will have more confidence in the final adjudications of our court of last resort.

Some objection has been made on the ground of cost, it is true, but the additional sum of fourteen thousand dollars a year, I think, will be well expended. And it may be that at some future time the number of judges can consistently with the public interests be reduced. Now is the time, however, in my judgment, at the very inception of our State Government, when the great questions of the day are to be litigated in our Courts, and when, if ever, we require a Supreme Court of five judges. Then, when litigation shall be less, when the great principles involved shall have been settled by final adjudication, we can fall back upon the smaller number, three judges of the Supreme Court.

Mr. DeLONG. What is the exact question?

The CHAIRMAN. A motion that we shall have five instead of three Supreme Court judges.

Mr. BROSNAN. Permit me a moment to explain, inasmuch as my colleague was not in when I made the motion. I found that there was an opinion prevailing to some extent in the Convention, or among some of the members of it, to the effect that it would be desirable to provide for five judges of the Supreme Court, in place of three, as reported by the Committee on the Judiciary; and in order that we may facilitate business as we go along, making the sections to conform to the number, whether it shall be three or five, I proposed, not by any means as my own choice, but in order to test the sense of the Convention upon that subject, before the Committee of the Whole shall enter upon the consideration of the report in detail, that we shall decide to have five judges in the first instance. The report provides for power in the Legislature to increase the number, as the public good may require, commencing with three. I have made the motion solely with the view of ascertaining the sense of the Convention.

Mr. DeLONG. In much that has been said by the gentleman from Ormsby, (Mr. Johnson,) I concur, but I have this to say to this Convention, that if we are wise—

The CHAIRMAN. Before the gentleman proceeds, I will call his attention to the fact, which he may not be aware of, that a rule has been adopted limiting speeches to five minutes, except by unanimous consent.

Mr. DeLONG. I shall not exceed the limit. I say if the members of this Convention are wise, if they wish to act in a practical manner, or at least if they are desirous of having this Constitution adopted by the people, they must have especial regard to those provisions which met with disfavor last year. They must endeavor to avoid, so far as may be in their power, at all events, those errors which then met with the disapproval of the people. There were several objections urged against the Constitution presented last year, and prominent amongst them was that of the expense involved. And at this time, too, almost the only question is, "can we afford it?" Let us convince business men, and the community generally, that we can afford it, that the cost will not be much more than that of the present territorial form of government, and the people will adopt our Constitution. But can we do that if we increase rather than decrease the number of officers to be provided for under this instrument, and consequently increase the amount to be paid for salaries? I think not. Let us start, then, with but three judges, in the name of economy, giving the people the right, in their first Legislature, if they desire it, to increase the number to five. There will be but very little business done by the Court before the people will have an opportunity to be heard through the Legislature, and to increase the number of judges if they shall so determine. We then go before the people with an instrument which promises them a cheaper government, if they desire it, and at the same time if they wish to increase the number of Supreme Court judges, they are at liberty to do so. On the other hand, if you fix upon five as the number of judges in the first instance, leaving the Legislature power to reduce the number, people will say, "Oh, yes; they have the power, but they never will decrease the number. There will be five men on the bench, all of whom will have friends, and you never will get any of them off." I know in the committee that was urged, and regarded as a serious objection, and we agreed to change the plan, although many of us preferred the larger number of judges. The gentleman from Ormsby, I think, was not present.

Mr. JOHNSON. I was present at one time, when five judges were agreed upon. Subsequently that was reconsidered.

Mr. DeLONG. At the subsequent meeting I was present, when we agreed to change the number to three; and we concluded to make that change on the grounds which I have stated. If we provide for five judges in the first place, with power in the Legislature to reduce the number, people will say that the salaries of five judges, at so much each, will amount to such a sum per annum for Supreme Court judges, and they will put the argument altogether on that basis. Now let us place the argument the other basis, by fixing upon three judges in the first place. There can be but

little business before the Legislature will have an opportunity to increase the number, if necessary; and, as to an increase, I would say that California has gone on happily for many years with only three judges on her Supreme Bench, and to-day many members of the bar of that State think it would be better off with three than with five judges, because with five there are more dissenting opinions.

Mr. WARWICK. I was the one who proposed, in order to test the sense of the Judiciary Committee, to increase the number of judges to five. I made the proposition judging from the experience of California, and having the sanction of several prominent members of the bar, and even the endorsement, I believe, of the able gentleman from Storey, (Mr. DeLong,) who has just spoken. I thought that having the approval of so distinguished a lawyer, in view of the experience of California in the past, which has been such as to render it necessary to increase the number of judges in that State, and considering also the magnitude of the interests involved in our litigation, it would be well enough to increase the number to five. I spoke to several members of the committee, and they agreed with me, and the proposition was concurred in by the committee. Afterwards, however, actuated by considerations of economy, the committee saw fit to rescind that action, but with the understanding that the question would be brought up in the Convention. I think, myself, that it would be practically more economical to provide for five judges, than for three, in consideration of the interests involved in our litigation. The decisions would then be more satisfactory to litigants, to tax-payers, and to the people generally, while the increase of cost, in the matter of salaries, would be but slight.

Mr. WETHERILL. The difference in expense is only fourteen thousand dollars a year, I know, but these various items go to swell up the grand total, and I believe there is no necessity for more than three Supreme Court judges. Even with three judges we shall have great difficulty in our nominating Conventions to find that number of men possessing the requisite capability who will accept the position; and with five we shall encounter the same difficulty, but greatly increased. If we wish to secure ability and discretion on the bench, I think we shall succeed better by limiting the number to three instead of five, and I hope the change will not be made. [Question! Question!]

Mr. CHAPIN. If it is in order, I wish to say a word or two before the question is taken. I feel the importance, if not the necessity, of having a bench of five judges, and especially at this period, when there is so much important business to come up before the Courts. But I am free to confess to this committee my fear, that when we come to select five judges of the Supreme Court, and then some eight or nine judges of the several District Courts, we shall find ourselves a little short of timber.

Mr. JOHNSON. That is a reflection on the bar. There are two hundred lawyers in the gentleman's own county. [Laughter.]

Mr. CHAPIN. But it is usual in Conventions when making nominations—and the politicians are very nervous and sensitive, indeed, on that subject—so to arrange the matter of selections that the several districts of the Territory or State shall all be represented; that each district shall be represented in the nominations, for whatever offices they may be. It will be so in this case, and that, above everything else, in my opinion, is what stands in the way of making good selections. I think, myself, that we ought to have five judges, but the question is whether we had not better start with three, and then leave the Legislature to increase the number, if it shall be found practicable and desirable.

The question was taken upon the motion of Mr. Brosnan, to provide for five judges, and upon a division the vote was—ayes, 8; noes, 14. So the motion was lost.

The CHAIRMAN. The Secretary will now read the article by sections.

COUNTY COURT IN STOREY COUNTY.

Mr. KENNEDY. It seems to me that before commencing the consideration of the article in detail, we might as well settle this other question, in regard to the County Court in Storey County. I will therefore move—it makes no difference which way the question is put—that we do not have a County Court in Storey County.

Mr. LOCKWOOD. I rise to a question of order. It does not need any motion or resolution. If the gentleman desires to move to strike out so much as relates to that subject, I have no objection.

Mr. KENNEDY. I think my motion is the very one that should be made, because it will be a vexed question, and it can be settled better now than when we are considering the article by sections. And there is another idea that should be taken into consideration; if we do not have a County Court in Storey, it will be necessary to increase the number of District Judges in that county.

The CHAIRMAN. The Chair will entertain the motion at the present time, believing that it will tend to harmonize our action.

Mr. NOURSE. I am in favor of this motion, and my reason is, that it will preserve uniformity in our judicial system. In the committee I was unable, and I still am unable, to see any good reason why we should provide for a County Court in one county, and for none in the others, when the addition of another District Judge in that county, making three instead of two in the district, will be sufficient provision for all the litigation of the county; and then all the records may be brought together, and kept in one place. This proposition for a County Court in Storey County, it seems to me, makes a bad break in our system, which is wholly

unnecessary. Although there may be good reasons for it, I have not yet heard any such advanced.

Mr. FRIZELL. I hope the report of the Committee on the Judiciary, in relation to the County Court of Storey County, will be sustained. With all due deference to gentlemen who think differently, in my opinion, we need there a court of that character. And I cannot see that the provision creates any particular inharmony or discord in our proposed judicial system, when it allows the Legislature, as soon as any other county shall progress sufficiently in wealth and population, to establish a County Court in such county also. There are the Counties of Lander, and Humboldt, and Esmeralda, to each of which it is proposed, by the report of the Judiciary Committee, to give but one court and one judge; but I look forward to the time when they will have so far advanced, by reason of their local wealth, and their natural progress, as to need another court. Within the next two years, I have faith to believe that one, two, and possibly all three of those counties will require a County Court in addition, and the Legislature can make the necessary provision. In the meantime they will be sufficiently provided for under this article as reported. Therefore, I say that I discover no particular discord or inharmony in this provision for County Courts.

I am sorry to differ with gentlemen, but as a representative of Storey County, I say we do need that court. Our circumstances in that county are peculiar. There are numerous cases which properly come before a court of such nature, that might occupy all its time, sitting every day in the year. The District Court will have only its regular sessions, and these minor cases could only be reached at the regular terms, and would frequently have to go over from term to term. Hence, I insist that a County Court is needed in Storey County. Besides, I am always disposed to look with some degree of suspicion on practising attorneys—[merriment]—that is, in regard to the establishment of the courts. I stand here more as the representative of the people than of the bar, and I say that the people of that county need, and require us to give them a County Court. I hope that the report of the committee will be sustained.

Mr. DELONG. There is exactly where the whole difficulty lies, and that is what prevailed in the committee. Our darling little sister, Gold Hill, is aspiring. She wants to have the county divided, and when it is cut in two, she thinks she will get a court. In order to promote that end, the gentleman is willing to muddle this business, and injure the profession.

Mr. FRIZELL. Did I not give that up?

Mr. DELONG. Yes; by word of mouth; but some how or other in the committee the gentleman beat me, and having some experience in matters of that sort, I at once imagined there was a cat in the meal, and I am still of the same opinion. [Merriment.]

Now is it not really the object to divide the district, and give the little cabin city a court? If not, what is the object of our having a County Court? Cannot three District Judges do all the judicial business that we require in that county, with the aid of the justices of the peace, and so maintain the harmony of the system throughout the State? We can have one, two, or three judges, just as we need. But, no! With this exception for a County Court in our county, the whole article has got to be interlarded with "except the County of Storey," and to the courts in that county is to be given especially such and such jurisdiction. I say it muddles the whole thing, and I hope that Storey County will be allowed to stand like the rest of the State. Gold Hill appears in this matter here, as it did in the committee. It outmanaged me there, but I trust that the Convention will take the matter in hand, and preserve the uniformity of our judicial system.

Mr. KENNEDY. I have no particular feeling in this matter, and the only objection I have to making the exception in relation to Storey County, is that it spoils the harmony of the system. I have also heard from several of the delegates from Storey County, that the people do not want it there, but that they would prefer to have three district judges. In this matter I am willing now, as I was before the committee, to abide by the wishes of Storey County, and believing that a majority of the people of the county directly interested desire to have three district judges, and not a County Court, I shall vote to abolish the County Court.

Mr. FRIZELL. I spoke only two minutes and a half or three minutes, before, so my time is not yet exhausted. Now I am surprised that the gentleman from Lyon should profess to know more about the wishes of the people of Storey County than I do, and I assert that so far as establishing three District Judges is concerned, there is not a man or boy, old woman or young maid, in Storey County that has advocated it to my knowledge.

Mr. DELONG. If you have a County Court, suppose you want a change of venue from Storey County in any case, what Court would you go to?

Mr. FRIZELL. Excuse me; I am talking on time. [Merriment.]

Mr. DELONG. Oh; very well.

Mr. FRIZELL. Now I have no sinister motives in this matter. I seek nothing, and am asking nothing for Gold Hill. All I did ask in the first place, I gave up. Yielding to men older than myself, I acquiesced in the best humor in the world. But the people of Storey County do not want these District Judges, and I do not want them to have them because they really are not needed. On the other hand, the County Court is really needed, and I hope we shall not be deprived of it. Why, sir, I was in the Court when eight divorces were granted in one day. [Laughter.] At least it is so reported. I have mixed among the people of Storey,

not one class alone, but all classes, and I say we do not want three District Judges. And if you do away with our County Court, I shall make another speech of five minutes, if I can get a chance, in favor of two District Courts.

Mr. KENNEDY. I only wish to say, that before the gentleman's colleague, Mr. Hovey, went away this morning, he talked with me on this subject, and his earnest desire was to be here, in order to aid in abolishing this County Court of Storey County. He has often told me that was the wish of the people of Storey County.

Mr. COLLINS. I do not know by what right the gentleman spoke for Storey County. I claim to be as much a representative of that county as any other gentleman on this floor, and without professing to be able to state positively what is the opinion of the people of Storey, for one I believe that, if their true sentiment were obtained, it would be found to be almost unanimously in favor of a County Court. I know what is the feeling of the lawyers generally in regard to this matter, but I do not think the influence of the lawyers should be paramount upon a subject which pertains not to them alone, but to the people as a whole.

One reason why I want a County Court in our county is, that there are always a great many small cases, involving amounts which range between three hundred and five hundred dollars, and to carry on these small suits, there is a class of lawyers who are not extremely ambitious, and do not expect to receive those extraordinary fees which the higher grade of lawyers do, and yet they are just as competent as other men to carry these cases through the lower courts. By that means we can secure justice, in cases involving only those small amounts, without paying excessive costs, which have been known in some cases to amount to a great deal more than the sum for which suit was originally brought.

If you look at the constitution of society you will find it always divided into classes or grades—with higher, middling, and lower grades. And if you look at the various institutions organized under this arrangement of society, you will always find them graded in the same manner, because there is a class of minds adapted to each of those grades. So it should be with the arrangement of our judicial tribunals. There is no reason in the world why the District Court of Storey County should be brought down from the dignity of its lofty position to attend to these small cases that rightfully belong to a class beneath—to a Court lower in grade than a District Court. Then again, it would not be an easy matter if these small cases are left to the District Court, with two or three judges, to determine which judge should try them. One judge would feel that he did not want them, and another would feel the same reluctance, and it would be extremely difficult to get anybody to attend to them. I insist that there is this large class of cases involving smaller amounts that ought to be given to courts of a lower grade, and the District Court should not be burdened with them. In a lower court these small cases could be carried on cheaply and more promptly, and that, I contend, is the best system which gives justice promptly—on the spot—so that the law's delay is practically ignored.

I ask the Convention to give us this smaller court, that shall stand intermediately between the District Courts and the range of the inferior courts—those of the justices of the peace—although it may not meet with the approbation of some of the lawyers and office-holders. Why, sir, I have had occasion to go to a lawyer and ask him what his price would be to attend to a certain case in a Justice's Court, and of course he would not charge as much as in a District Court; and for like service in the County Court he would make a higher charge, and in the District Court so much more, making the arrangement according to the degree and status of the court. Then, I say that in regard to the expense—

The CHAIRMAN. The gentleman's time has expired.

Mr. PARKER. I understand that the proposition in the report is to have a County Court in only one county. Now I am no lawyer, nor the son of a lawyer, but I would like to ask of gentlemen of the bar, in all seriousness, how they are going to make that harmonize with the courts in other counties. I would like to know particularly what is going to be done in case of a change of venue? We will have to make some special provision for that, I suppose.

Mr. COLLINS. I will suggest, in answer to the gentleman's question, that the Legislature, in creating these courts, would probably be in the possession of good sense enough to make some provision by which, in a case where a change of venue is desired from the Storey County Court, it can be carried up to the District Court of an adjoining county.

Mr. PARKER. I think we would have to make some such provision here.

Mr. COLLINS. Would not the Legislature have the power, and the sense to do it? It might be very well for a lawyer to make that suggestion, in order to make a point in his argument, but it seems to me that it ought not to come from the practical sense of a layman.

Mr. PARKER. That is very possible, but then there are other difficulties. We provide that the Grand Jury shall make their presentments and findings of indictments in this court; and it is suggested to me that we have also a provision in the Constitution requiring that all laws must be of a general nature, and uniform in their operation. Now, in a case of murder in the first degree, for instance, the indictment will have to be transferred to another court. It seems to me that if we make such an exception to the general system, a great deal of work will necessarily have to be done, in the way of special legislation, in regard to transferring

cases, change of venue, and almost everything else connected with such a court.

Mr. NOURSE. I wish simply to say, that it seems to me there is a good deal in this objection in regard to change of venue. For example, if a case is tried in the County Court in Storey County, the appeal lies to the District Court; but if you change the venue from Storey County, you necessarily give the appeal to the Supreme Court instead of the District Court. If you change one cog in the gearing, which should be as big as any other, it makes a smash every time the wheel brings it around. And you do not save any expense by it. It is no cheaper to try a case in the County Court than in the District Court. The county will have to pay the District Judges a salary of perhaps a thousand or two more a year, but then you will get much better timber for judges; because, the County Court being regarded as third rate, you cannot get as good men to accept the position of judge as you can in the District Court. It costs no more to impanel a jury, and no less, and the expense of one court is the same as the other, save and except the extra expense of the judge; in return for which you get a much better grade of legal talent on the bench, whilst at the same time you preserve the uniformity of the system.

I cannot appreciate the arguments of these gentlemen who are locally interested. I am glad to get information from them, of course, but in my judgment this is not merely a local question. We are making a Constitution for the whole State, and these gentlemen are here as much to make a Constitution for the County of Washoe as I am, and I am here to make a Constitution for the County of Storey, as much as they are. Therefore, while I take no part in any jealousy or rivalry that may exist between Gold Hill and Virginia, I only ask that the system which we adopt shall be uniform; and the burden of proof is upon those who ask for a County Court, that would be a variation from the general system, to show good reason why such a court should be provided for. I have heard no such good reason yet, and therefore I shall vote for the amendment.

Mr. MASON. I can see no reason why there should be this clashing of interests. I feel as much interest in the future welfare of Storey County as in that of Esmeralda; but I say if there should be a County Court in Storey, there ought to be one also in Esmeralda, for we have the same kind of interests there. But I want uniformity in the system, and I am opposed to these County Courts. I look upon that whole system, as it has existed in this Territory, as little better than a nuisance, which should be abolished, not only in Washoe and Ormsby, and other small counties, but in every county.

As to the great preponderance of population in Storey County at the present time, I am under the impression that as soon as the wealth of some of the distant counties shall become developed, as, for example, Humboldt, Lander, Nye, and my own county, Storey County will not be burdened with any such vast superabundance of population.

Mr. CHAPIN. I would like to have this judicial system harmonize all the way through, by making it alike in every county; provided, always, that justice can be meted out in Storey County, where we have a vast amount of business, and where our manner of doing business may be somewhat different from that of the people of other counties. If my friend and colleague (Mr. Collins) be correct in his view, that a County Court is going to bring justice within the reach of the poorer classes of the people, then I would be in favor of it, most decidedly. I do not feel the weight of his arguments, however, for I cannot see why the matter may not be so arranged that we can get along just as well without a County Court. Then any such suit as those to which he has referred, may be brought in the District Court, and the litigants will have the benefit of a better class of men on the bench. The slight difference in the amount of salary, it appears to me, is of no account. If we can go into the District Court, and have all our cases tried there, I certainly prefer it, and I must hear stronger arguments than have yet been advanced to induce me to vote for the County Court.

Mr. BANKS. The gentlemen of the Storey County delegation, who are favorable to this proposed County Court, are among those members of the Convention to whose judgment I have been more especially in the habit of deferring, and I would very gladly do so in this instance, if I could. But, after listening to their arguments, I think the question resolves itself down to this—or, at all events, I see no point except this—that by having a County Court the community will be enabled to give employment to a class of lawyers generally regarded as inefficient. Now, sir, I have always believed in stimulating talent to the attainment of the most exalted qualifications possible, and by favoring the employment of only the best lawyers, we shall be stimulating the ambition of members of the profession to rise to that rank. There is in California a class of lawyers who never seem to aspire to anything beyond the Justices' Courts, and another class who never attempt to rise above the level of the County Courts. Those two classes I believe to be nuisances in any community, and I am ready to vote for anything that will have a tendency to discourage their existence. I believe there is no reason for this proposed deviation from the general system, except the one assigned by the gentleman from Storey, (Mr. Collins,) to which I have alluded, and that I conceive to be a very bad reason. Therefore I shall vote in favor of establishing a uniform system in all the counties of the State.

Mr. COLLINS. I ask the privilege of saying a word or to two—only half a minute. ["Leave Leave!"]

The CHAIRMAN. The gentleman will be allowed half a minute, if there is no objection.

Mr. COLLINS. I wish to say this, that in our Probate Court, or County Court, at this time, the docket is full, or certainly very nearly so. There are four hundred cases or thereabouts upon the printed docket. Now, it will take six months, or a year probably, for the District Court to clear off the present docket, and the small cases ought to be tried from week to week, or from month to month. The parties who are interested in them will suffer heavily, unless they have their cases promptly tried from time to time, and if we form these District Courts only, making no provision for a County Court, they cannot be tried until the docket of the District Court is cleared. I think that would work a manifest and great injustice to the poorer class of litigants, compelling them to wait until all these collosal cases are tried, some of which are going to occupy the time of the Courts probably from one to three weeks apiece.

I contend that society is classified, not by arbitrary rule, but by the law of nature, into first, second, third, and even fourth grades, and that we should not overlook that great law of nature when we are making the fundamental law of the community. If a lawyer is competent to carry causes through the Probate Court, and not competent, perhaps, for the higher court, we should nevertheless not ignore—

The CHAIRMAN. The gentleman's time has expired. The question is on the motion of the gentleman from Lyon, (Mr. Kennedy,) to strike out the provision for a County Court in Storey County.

Mr. COLLINS. Is it in order to move to refer it back to the Storey delegation?

Mr. PARKER. We are in Committee of the Whole.

Mr. COLLINS. But cannot one committee refer a subject to another?

Mr. PARKER. Certainly not.

Mr. GIBSON. I move that the committee rise, and recommend that this part of the article be referred to the Storey delegation.

Mr. BROSNAN. There is nothing before the committee, except this motion. We have not yet considered the article by sections.

Mr. DELONG raised a question of order that the motion to rise could not be entertained while Mr. Kennedy's motion was pending.

After a brief discussion,

The CHAIRMAN overruled the point of order.

Mr. DELONG. The Storey delegation cannot agree, and what is the use of referring it? We shall have to settle the question here, at last.

Mr. JOHNSON. I would prefer that the delegation should settle the question among themselves, but the trouble is this, that the change proposed will involve corresponding changes in many other sections, and it would be impossible for the Convention, or the Committee of the Whole, to proceed any further with the article until final action has been taken upon this question. The proposed reference to the delegation would therefore practically place the whole article beyond our reach, for further consideration, until the delegation shall have reported.

Mr. DUNNE. I call attention to the fact that the reference would be equivalent to an adjournment, as this is the only business which the Convention has ready for consideration.

The question was taken on Mr. Gibson's motion that the committee rise and recommend a reference to the Storey delegation, and it was not agreed to.

The question was then taken on the motion of Mr. Kennedy, to strike out so much as relates to a County Court in Storey County, and it was agreed to.

Mr. COLLINS. I give notice that I intend to move a reconsideration.

The committee proceeded to consider the article by sections.

ENUMERATION OF COURTS.

The SECRETARY read Section 1, as follows:

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, District Courts, in County Courts, and in Justices of the Peace. The Legislature may also establish Courts, for municipal purposes only, in incorporated cities and towns.

Mr. BROSNAN. I now move to strike out the words "in County Courts."

The CHAIRMAN. The Chair will hold that that has already been done by the action of the committee.

No further amendment being offered, the section, as amended, was adopted.

CONSTITUTION OF SUPREME COURT.

Section 2 was read, as follows:

SEC. 2. The Supreme Court shall consist of a Chief Justice and two associate Justices, a majority of whom shall constitute a quorum; *provided*, that the Legislature, by a majority of the members elected to each branch thereof, may, at its second session, or any time thereafter, provide for the election of two additional associate Justices, and if so increased, three shall constitute a quorum. The majority of the whole Court shall be necessary to render a decision.

Mr. STURTEVANT. I move to amend the section by adding the following:

"*Provided*, That there shall be a special tax of one mill on the dollar, upon all property, real, personal, and mixed, including mines and mining property, to be retained as a special fund, and to be used only to pay the expenses of the Supreme Court of this State."

Mr. DELONG. We have provided for their compensation in another section, by a court fee.

Mr. NOURSE. At the request of my colleague, I second his amendment.

The question was taken, and the amendment was not agreed to.

Mr. CHAPIN. I move to amend by striking out "at its second session, or any time thereafter." Then it will leave the Legislature power to make the addition at the first session, if the interests of the people demand it.

Mr. DUNNE. Why not strike out that clause altogether? Otherwise you limit them, as it will read, to the first session.

Mr. DeLONG. No; they are not limited, then, to any session.

The question was taken on the amendments offered by Mr. Chapin, and it was agreed to.

Mr. DUNNE. I move to amend by inserting the word "all" before "the members," so that the clause will read: "by a majority of all the members elected to each branch," etc.

The question was taken, and the amendment was agreed to.

No further amendments being offered, the section, as amended, was adopted.

ELECTION AND TERM OF OFFICE OF JUSTICES.

Section 3 was read, as follows:

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at the general election, as provided by law, and shall hold office for the term of six years from the first day of January next succeeding their election; *provided*, that there shall be elected at the first election under this Constitution, three Justices of the Supreme Court, who shall hold office from the time of their election and qualification, and continue in office thereafter two, four, and six years respectively, from the first day of January next succeeding their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall classify themselves, and determine by lot the term of office each shall fill, and the Justice drawing the shortest term shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the senior Justice in commission shall be Chief Justice.

Mr. JOHNSON. I submit now whether it is not advisable to fix the term so as to commence on the first Monday of December. We have a report from the Schedule Committee, I believe, in which such a provision is embodied, but I do not understand that it is contained in the report of the Judiciary Committee. It is sufficient, I apprehend, if it is in either one article or the other, and if we insert it here, when we are called to act upon the report of the Schedule Committee, if we find it repeated, we can strike it out. It is a matter that I am not particular about, and I prefer not to make any motion, but rather to suggest it to the Chairman of the Judiciary Committee.

Mr. BROSNAN. As I understand the article, they will be judges from the time of their election and qualification, and may meet for the first term at such time as shall be provided, or at any time thereafter. No time is fixed for their first meeting, when they are to classify themselves by lot, except that it shall be as soon thereafter as practicable.

Mr. PROCTOR. If they are elected and qualified, and go into office in December, then the shortest term will be two years and one month, instead of two years.

Mr. BROSNAN. That is so.

Mr. JOHNSON. The objection I raise—and the explanation will only present it in a more striking view—is that there is no fixed time, no definite interval, between the period of their election and the time of their qualification. The election will occur on a particular day, and the time for qualification must necessarily be afterwards. My objection is, that there is not, as there should be, a fixed time, not only for their successors, but at which those who are first elected shall enter into office.

Mr. BROSNAN. I supposed that was to be provided for in the Schedule—that the time would be fixed in that when the judges, and all the State officers, shall enter upon the discharge of their duties.

Mr. JOHNSON. Then this would be in conflict with the Schedule, because there the time is fixed for the first Monday of December.

Mr. BROSNAN. We can make them harmonize. Will the gentleman suggest an amendment that will be in conformity with the provision in the Schedule?

Mr. JOHNSON. I will suggest that instead of "time of their election and qualification," we insert "from the first Monday in December."

Mr. BROSNAN. I am willing to accept that.

The question was taken on the amendment suggested by Mr. Johnson, and it was agreed to.

Mr. JOHNSON. Will the Secretary read the proviso as amended?

The SECRETARY read as follows:

"*Provided*, That there shall be elected at the first election under this Constitution, three Justices of the Supreme Court, who shall hold office from the first Monday in December, 1864, and continue in office thereafter two, four, and six years, respectively."

Mr. JOHNSON. Now we want to add "until the election and qualification of their successors." My attention has been particularly called to this. The section should be so framed as by its language to continue the Supreme Court Judges in office until the election and qualification of their successors, which would be two years succeeding their election and qualification.

The SECRETARY. Then will you see if I have it right this time. Striking out, in the first place, "time of their election and qualification," and inserting in lieu thereof "first Monday in December, 1864;" then, in the second instance, striking out "from the first day of January next succeeding their election," and inserting instead "and until the election and qualification of their successors." Then it reads:

"*Provided*, That there shall be elected at the first election under this Constitution, three Justices of the Supreme Court, who shall hold office from the first Monday in December, 1864, and continue in office thereafter two, four, and six years, respectively, and until the election and qualification of their successors."

Mr. BANKS. While the gentlemen are fixing that proviso to suit them, I will ask of some gentleman more familiar with the subject than I am, what provision is made for filling vacancies?

Mr. JOHNSON. I will suggest that we pass over this section, informally, for the present.

The CHAIRMAN. If there is no objection, the section will be passed over for the present.

Mr. DeLONG. In answer to the inquiry of the gentleman from Humboldt, I will state that the Committee on the Judiciary came to the conclusion, pretty unanimously, I believe, that a judge who could stand the position in this country, must become iron-clad, and consequently there will be no danger of a vacancy. (Laughter.)

The CHAIRMAN. The Chair will say that it becomes necessary, gentlemen of the committee, that we should have the entire attention of every member. It sometimes occurs that the neglect of one member hinders and delays the whole committee.

JURISDICTION OF THE SUPREME COURT.

Section 4 was read, as heretofore amended, as follows:

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also in all cases at law in which is involved the title or the right of possession of real estate or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand (exclusive of interest) or the value of property in controversy exceeds three hundred dollars; also, in other civil cases not included in the general subdivisions of law and equity, and also in all criminal cases in which the offense charged amounts to felony, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the State, upon petition on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any District Court in the State, or before any judge of said Courts.

Mr. WETHERILL. I move to strike out "three," in the seventh line, and insert "two," so as to give jurisdiction in cases exceeding two hundred dollars.

Mr. DeLONG. Oh, no! That breaks up the whole arrangement.

Mr. WETHERILL. Well, let it go.

No further amendment being offered, the section, as amended, was adopted.

THE JUDICIAL DISTRICTS.

Section 5 was read, as follows:

SEC. 5. The State is hereby divided into nine Judicial Districts, of which the County of Storey shall constitute the first; the County of Ormsby the second; the County of Lyon the third; the County of Washoe the fourth; the Counties of Nye and Churchill the fifth; the County of Humboldt the sixth; the County of Esmeralda the seventh; the County of Douglas the eighth; and the County of Esmeralda the ninth. The County of Roop shall be attached to the County of Washoe for judicial purposes, until as herein otherwise provided by law. The Legislature may, however, by a vote of two-thirds of all the members elected to each branch thereof, provide by an alteration in the boundaries or division of the districts herein prescribed, or otherwise, for increasing or diminishing the number of the Judicial Districts and judges therein; but no such change shall take effect except in case of a vacancy, or the expiration of the term of an incumbent of the office. At the first election under this Constitution, there shall be elected in each of the respective districts, (except as in this section hereafter otherwise provided,) one District Judge, who shall hold office from the time of his election and qualification until the first day of January, in the year one thousand eight hundred and sixty-seven. After the said first election, there shall be elected, at the general election which immediately precedes the expiration of the term of his predecessor, one District Judge in each of the respective Judicial Districts, (except in the first district, as in this section hereinafter provided.) The District Judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of four years (excepting those elected at said first election) from the first day of January next succeeding their election and qualification; *provided*, that the first Judicial District shall be entitled to and shall have two District Judges, who shall possess co-extensive and concurrent jurisdiction, and who shall be elected at the same time, in the same manner, and shall hold office for the like terms, as herein prescribed in relation to the judges in other Judicial Districts.

DISTRICT JUDGES IN STOREY COUNTY.

Mr. DeLONG. I move to amend the proviso by striking out the word "two," and inserting instead the word "three," so that we may have three judges in Storey County.

Mr. FRIZELL. I look upon this as an important matter, and I would like to have the yeas and nays taken upon the question of abolishing the County Courts.

The CHAIRMAN. That can only be reached in the Convention; we are now in Committee of the Whole.

Mr. FRIZELL. I know; but when I go back to my constituents, I wish to stand right on the record. That is the reason I shall ask for a vote by yeas and nays. But if the County Court is to be abolished, I think that two District Judges in Storey County would be sufficient. I believe there would be difficulty in getting a panel of jurors for a greater number of courts, for all the jurors that can be obtained in the county, in my opinion, will be no more than are required for one District Court. The business of the community is in a mixed up, hotch-potch condition, and the people generally are so much interested in the various questions that are litigated, that it is very difficult now to get an impartial jury. I think, however, that we might get along with two District Judges, if we have no County Court, but three are not required. I hope gentlemen will consider this matter, and on the motion of my colleague to strike out "two," and insert "three," I shall ask for the yeas and nays.

The CHAIRMAN. It will not be in order to demand the yeas and nays in Committee of the Whole.

Mr. NOURSE. The gentleman's apprehensions are not well grounded, for the reason that it is not proposed to establish three District Courts, but only one District Court, with three judges. Those judges will divide up the calendar, and hold court all in the same building, though in different rooms. In my judgment, it will be easier to get the requisite number of jurors for this one court, with three judges, than it would be for two distinct District Courts. You will not require so large a venire as you would for two District Courts, or if you were to have a separate County Court. For exam-

ple, suppose that one judge is impanneling a jury in a murder case. Many of the jurors will be found disqualified from serving, by reason of having formed an opinion; but a jury is finally obtained, and the case goes on, and then all the jurors who were excused in that case are perfectly eligible to sit in the next room, before another judge, who is trying a civil case in which they are not interested at all. Therefore, I say, it will not take as many jurors to run a District Court with three judges, as it would if you have separate courts, in which, if a juror is thrown out in one case on trial, he cannot act anywhere, and is left idle until the trial of that case is concluded.

As to the number of judges, I think nobody will deny that for the next two years, at all events, three judges will be none too many in that county; and the Legislature may make provision for reducing the number at that time, if there should be a decrease in the amount of business. It may provide that after the term of one of the judges expires, there shall be but two in the district, or may even reduce the number to one, if it shall be deemed expedient.

Mr. BANKS. Now, sir, I wish to understand this matter perfectly before I am required to vote upon it. My impression concerning it (and I desire to be corrected if I am not right) is this: In the first place, Storey County constitutes but one judicial district, with one court. That court is to consist, if we adopt this amendment, (as I suppose we shall, after having abolished the County Court,) of three judges. They are to occupy different apartments, in the trial of causes; and then, so far as relates to decisions, I will ask if it will require the concurrence of at least two of the judges to render a decision?

Mr. DeLONG. Oh, no; they are to be independent.

Mr. BANKS. They will be independent, then, so far as their action is concerned, but they will constitute, at the same time, one court. Now, I ask, why would it not be as well to create three courts, allowing each one of them to exercise jurisdiction all over the county, just as it is now provided they shall, instead of constituting one court, and leaving the three judges of that court to sit and act separately, as though each judge constituted a court?

Mr. DeLONG. The difficulty is this: suppose that one judge should be a little more popular than the others; the result would be that his court would be overcrowded, and the other two would be without business, or with very little to do, so that we should be blocked up just as badly as we are now. Under this arrangement, lawyers and litigants will not know beforehand which judge is going to try any particular cause. After the calendar is made up, the judges will apportion it among themselves, and each then goes into session upon the cases assigned to him, and it is only after the apportionment of the calendar that a man knows which judge he is to appear before. In that way everything goes on harmoniously. There are no separate records, and only one clerk and one jury.

Mr. BANKS. Well, the answer is perfectly satisfactory to me.

Mr. COLLINS. I hope this amendment will not be adopted, but that, on the contrary, we shall adhere to the provision for two judges. When the proper time comes, I shall endeavor to urge my reasons, as well as I may within the five minutes allowed. I do not think that now is the time to make a speech upon that point.

The question was taken, viva voce, on the amendment offered by Mr. DeLong, and the vote appeared to be in the affirmative.

Mr. COLLINS. I ask for a division.

Mr. DeLONG. I have a word to say before the division is taken, and it is this: I express it as my opinion, as a member of the bar of Storey County, that two district judges, working constantly from this time on for one year, could not try all the causes which are now on the calendar. There are about four hundred causes on the calendar, besides a number which have been commenced since the calendar was printed. Then, in addition, they are to have all the business now done by the Probate Court, which will occupy a great deal of time every month. Therefore, I say, if you limit it to two judges, the court will be blocked up just as it is now. We have some mining suits which will take two, three, or four weeks each to try, and then all the County Court business and criminal cases are also to come in. We require the services of three judges, and cannot get along with a less number.

The question was taken by a division, on Mr. DeLong's amendment, and the vote was—ayes, 16; noes, 2—no quorum voting.

The question was then again taken, viva voce, and the amendment was agreed to.

Mr. CHAPIN. I have an amendment to come in at the end of the section. I move to amend by adding the following words:

"*Provided*, That the Legislature may reduce the number of District Judges, when the business of the county can be performed by a less number."

Mr. BROSNAN. That is already provided for.

Mr. CHAPIN. All right, then; I withdraw it.

Mr. DUNNE. I understood the Secretary to read that the County of Roop shall be attached to Washoe, etc., "until as herein otherwise provided." I call the attention of the Chairman of the Judiciary Committee to that language. I would like to know whether the word "as" is there, or not.

The SECRETARY. It reads, "until as herein otherwise provided by law."

Mr. NOURSE. I move to strike out the words "as herein."

The question was taken, and the amendment was agreed to.

Mr. JOHNSON. I desire to propose an amendment, which will be in harmony with the

suggestion I made relative to the terms of judges of the Supreme Court. I cannot refer to the number of the lines, as I am reading from the printed copy, but the clause I wish to amend now reads as follows:

"At the first election under this Constitution, there shall be elected in each of the respective districts, (except as in this section hereafter otherwise provided,) one District Judge, who shall hold office from the time of his election and qualification, until the first day of January, in the year 1867."

This is liable to the same objection as that which was urged in reference to the Supreme Court Judges, and to prevent a conflict of language, I move to strike out the words "time of his election and qualification," and insert in their stead "first Monday of December, 1864," and it will then read:

"One District Judge, who shall hold office from the first Monday of December, 1864, and until the first day of January, in the year 1867."

The question was taken, and the amendment was agreed to.

Mr. JOHNSON. Now I will offer another amendment in the same clause. It reads—"At the first election under this Constitution," etc. I move to insert the word "general," so as to read—"At the first general election." No doubt this was intended, as I see the word "general" occurs in a subsequent clause.

The amendment was agreed to by unanimous consent.

Mr. JOHNSON. I would suggest a still further amendment in the same sentence. In the printed copy it reads—"And until the first day of January, in the year 1867," and the amendment I suggest is to insert the syllable "Mon," so as to read—"And until the first Monday of January, in the year 1867."

The amendment suggested was agreed to by unanimous consent.

Mr. JOHNSON. The same alteration is rendered necessary in the subsequent clause, which reads as follows:

"The District Judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of four years, (excepting those elected at said first election,) from the first day of January next succeeding their election and qualification."

I move to amend by inserting the syllable "Mon" in that clause also, so as to read "from the first Monday of January," instead of the "first day of January."

The amendment was agreed to by unanimous consent.

No further amendments being offered, the section, as amended, was adopted.

JUSTICES OF SUPREME COURT—AGAIN.

Mr. JOHNSON. I ask that the committee now return to the consideration of Section 3, which was passed over informally.

The CHAIRMAN. If there is no objection the committee will take up Section 3 again.

Mr. JOHNSON. I offer the same amendment in the first clause of Section 3, so as to read—"shall hold office for the term of six years from the first Monday of January next succeeding their election," instead of the "first day of January."

The amendment was agreed to by unanimous consent.

Mr. JOHNSON. The same amendment is necessary a few lines further on. It now reads—"and continue in office thereafter two, four, and six years, respectively, from the first day of January next succeeding their election." I move to amend that so as to read—"from the first Monday of January next succeeding their election."

The amendment was agreed to by unanimous consent.

Mr. JOHNSON. The section has already been amended by striking out "time of their election and qualification," and inserting instead "first Monday of December, 1864." I will ask that the section be read as now amended.

The SECRETARY read as follows:

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at the general election, as provided by law, and shall hold office for the term of six years from the first Monday of January next succeeding their election: *provided*, that there shall be elected at the first election under this Constitution, three Justices of the Supreme Court, who shall hold office from the first Monday of December, 1864, and continue in office thereafter two, four, and six years respectively, from the first Monday of January next succeeding their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall classify themselves, and determine by lot the term of office each shall fill, and the Justice drawing the shortest term shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the senior Justice in commission shall be Chief Justice.

No further amendment being offered, the section, as amended, was adopted.

JURISDICTION OF DISTRICT COURTS.

Section 6 was read as follows:

SEC. 6. The District Court in the several Judicial Districts of this State, (except in the First District, for which distinct provision is otherwise made in this article,) shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title to or the right of possession of real property, or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand (exclusive of interest) or the value of the property in controversy exceeds three hundred dollars; also, in all cases relating to the estates of deceased persons, and of the action of forcible entry and unlawful detainer, and also, in all criminal cases, not otherwise provided for in this Constitution, under such regulations as may be prescribed by law. They shall also have appellate jurisdiction in cases arising in Justices' Courts, and other inferior tribunals, as the Legislature may prescribe. The District Courts and their Judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs necessary to the complete exercise of their jurisdiction; and also, shall have power to issue writs of habeas corpus, on petition by or on behalf of any person held in actual custody in their respective districts.

Mr. DuLONG. I suggest that we have already virtually stricken out that which is contained within the first parentheses, except-

ing the First District. I move that all that, including the parentheses, be stricken out.

The amendment was agreed to by unanimous consent.

Mr. JOHNSON. I move to amend by inserting after the words "deceased persons," the words, "and the persons and estates of minors."

Mr. BANKS. I will suggest further, whether it would not be well to include cases of divorce.

Mr. DELONG. They are covered already. Those are actions in equity, and it is provided that the District Courts shall have original jurisdiction in all cases in equity. They will also have jurisdiction in all other cases provided for by law.

Mr. BROSNAN. I have no objection to the amendment of the gentleman from Ormsby, (Mr. Johnson,) but it appears to me that the courts must have equity jurisdiction over the estates of minors and insane persons. That is clearly a branch of the equity jurisdiction of the courts.

Mr. JOHNSON. I will add to my amendment the words, "and insane persons."

The question was taken on the amendment offered by Mr. Johnson, as modified, and it was agreed to.

Mr. NOURSE. I find a clause here which reads:

"They shall also have appellate jurisdiction in cases arising in Justices' Courts, and other inferior tribunals, as the Legislature may prescribe."

I move to amend that by inserting the word "such" before "other," so as to read, "in such other inferior tribunals as the Legislature may prescribe."

The amendment was agreed to by unanimous consent.

Mr. DUNNE. I move to amend by striking out the word "prescribe," and inserting "provide." To "prescribe" would imply a limitation of jurisdiction.

The amendment was agreed to by unanimous consent.

No further amendment being offered, the section, as amended, was adopted.

STOREY COUNTY COURT.

Section 7 was read, as follows:

SEC. 7. The District Court in the First Judicial District shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title or the right of possession to or the possession of real property, or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand (exclusive of interest) or the value of the property in controversy exceeds five hundred dollars; also, in all other civil cases not provided for in this Constitution, and also in all criminal cases where the punishment may be death. The said District Court, and the judges thereof, shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs necessary to the complete exercise of its jurisdiction; and also, shall have power to issue writs of habeas corpus, on petition by or on behalf of any person held in actual custody in said district.

Mr. DELONG. All that needs to come out now, since we have determined to make the system uniform by abolishing the County Court in Storey County. I move that the section be stricken out.

The question was taken, and the motion was agreed to.

Mr. NOURSE. I move to strike out Section 8, also. There is no need of reading it, for it relates altogether to County Courts.

The question was taken, and the motion was agreed to.

Mr. NOURSE. Section 9 is all in regard to the County Court, also. I think that had better be stricken out without taking the time to read it.

JURISDICTION IN STOREY COUNTY.

Mr. JOHNSON. It is not necessary to read the section. But in this connection, I desire to call the attention of members of the legal profession to one important consideration. So far as it relates to criminal business, ample provision has been made in this section; but since it has been determined to assign that business in Storey County to a District Court embracing three judges, I apprehend that some further provision will be necessary. The court is to be organized in December, and the Legislature does not convene until that time; hence it is necessary, in my judgment, to adopt some provision in the Constitution by which a grand jury can be impanneled in the meantime, because their services may be required before the Legislature will have time to enact needful laws concerning this particular matter. It occurs to me that it would be well for the Convention to designate one of the courts in which that jurisdiction shall be vested, at least until the Legislature can regulate the subject by law.

Mr. BANKS. Is there anything in Section 7, Section 8, or Section 9, which does not depend upon that portion which we have already stricken out?

Mr. JOHNSON. I do not think there is anything in those sections which could not well be stricken out. But here is the difficulty—and to this I wish to call the attention more particularly of the legal gentlemen of the Storey delegation—that during this intervening period of time, after the organization of the District Courts, and before the Legislature can take action, none of these courts, although possessed of co-extensive jurisdiction in criminal as well as civil cases, have especial authority given in criminal matters, as for example in the impanneling of a grand jury. I think it is important that one of these courts or judges should be designated, at all events, until provision shall be made by law.

Mr. DELONG. I really do not think that anything further is necessary. Either one of the judges of the District Court can receive the report of the grand jury, and direct it in every respect, the same as though there were but one judge in the district. An instruction from either one of the judges, would be an instruction from the First District Court.

Mr. BROSNAN. I do not see any difficulty at all in the way. The misapprehension seems to arise from the fact that gentlemen are confounding judges with courts. There is to be but one court, and all the judges of that court are to have co-extensive and concurrent power in all actions, criminal and civil. All the business to be done, which is to come before that one court, will be subdivided between the three judges of the court.

Mr. BANKS. And the ruling of each is final, so far as that court is concerned, is it not?

Mr. BROSNAN. Certainly. And upon any decision by either of the judges, an appeal can be taken from that court to the Supreme Court. The grand jury is to be impanneled as heretofore; it is in and for that court. And furthermore, there is a provision contained in this article to the effect that the courts now existing, and the officers now in power and office, shall so remain, and not be superseded by anything herein contained, until the provisions of this article shall go into operation.

Mr. JOHNSON. Nevertheless, I think it is important to have this matter fully understood, and my point is not amenable to the criticism which my friend from Storey (Mr. Brosnan) has suggested. But, with all deference to that gentleman, it occurs to me that, as proposed, this is a mongrel system, in so far as it provides for one court and three judges, each judge clothed with full and complete jurisdiction. It is not a court in which a majority is required to act, but each judge has equal power with his associates. It is for that reason—because there are three judges, each having equal power and jurisdiction—that I suggest that one of them should be designated for this important duty. Any one of them may perform it, but suppose that under peculiar circumstances there might be a disagreement in regard to the matter? There may be questions of great moment arising in a criminal prosecution. The defendant may, for sufficient reasons, prefer that the presentment shall be made in his case to Judge A., or Judge B., whilst the prosecution, influenced by some unexplained reason may desire to bring the subject before one of the other judges.

It is true we provide that existing courts shall not be superseded until the new courts are organized, and the judges enter upon the duties of office, but gentlemen will observe that the date of that occurrence is fixed before the time the Legislature convenes, and consequently there is an interval between the commencement of the courts and the assembling of the Legislature, or the time when the Legislature can make suitable provision in the matter, whereby there may be some controlling power or authority in the district. It is now a general power, conferred upon each of the judges alike, and for the reason that there are to be three of them, I submit this proposition to the Convention, that is necessary, for the intervening time, that provision shall be made by which grand juries may be impanneled by authority of one of those judges; or, if you please, by authority of two of them, or of all three. I can see distinctly that a practical difficulty is likely to arise in this matter, and it seems strange to me that other gentlemen do not recognize similar objections.

Mr. BROSNAN. My friend from Ormsby will see, of course, that it is impossible for us in this Convention to designate any one of the three judges, inasmuch as they are not yet elected, and there is no one whom we could name.

Mr. JOHNSON. That only presents the difficulty which I have suggested in a more forcible light, and the same practical objections were urged in the committee. Instead of having one District Court with three judges, we should have provided for three District Courts, although we might have given them concurrent jurisdiction over the whole county. Then there would have been Judicial Districts No. 1, No. 2, and No. 3, and although the judges would have been elected in the same county, and would possess co-extensive jurisdiction within that county, nevertheless we could direct that until the Legislature should otherwise provide by law, the judge of District No. 1, or No. 2, or No. 3—whichever we might please to designate—shall exercise jurisdiction, in criminal cases, in said county. Then we would avoid that confusion which, it appears to me, must inevitably result from having these three judges, each with the self-same powers and jurisdiction, and all sitting in the same court. I merely desire to make the suggestion of this practical difficulty, in order that, if possible, it may be obviated.

Mr. NOURSE. I do not anticipate so much difficulty as the gentleman from Ormsby does, although I see clearly that we must provide for this matter of jurisdiction temporarily, in order to save trouble. I suppose, however, that such provision should be made in the Schedule, the peculiar office of which is to arrange for the change from one system of government to the other.

As to the matter of three judges in one district, I cannot see the difficulty which the gentleman apprehends. The scheme is not a new one. It has been tried year after year in New York, the State from which we borrow all the leading features of our code. There, the judges, by a rule of court—and every court necessarily has power to make its own rules—arrange for a division of their business; and under the rules of the court, the three judges, sitting together for the purpose, divide the calendar. All these minor details and arrangements which the Legislature neglects, or fails to make, are necessarily provided for by the rules of the court, and I have no fear that in this State, especially since we have the advantage of the precedents derived from the courts in New York, we shall find any difficulty on that score.

If you make three distinct districts, numbering the courts in them separately, and giving

each concurrent jurisdiction throughout the county, you thereby necessarily give the plaintiff, in any suit, his choice of judges. The gentleman from Storey (Mr. DeLong) has referred to other objectionable features in that plan, but this one thing, it seems to me, should be sufficient for its overwhelming condemnation, that a plaintiff has a chance to pick his judge, and, of course, will always select the one who, for some reason or other, he thinks would decide the case in his favor. That would necessarily lead to suspicions against the integrity of the judge, and that is the reason, I presume, why the courts in New York establish rules for the management of their business, and division of their labors. That will undoubtedly be done here. Then, whichever judge is designated, under the rule, for the criminal business, will charge the grand jury, receive the presentments and indictments, and all that, and the others will attend to the civil calendar. I cannot see any difficulty in the way of the harmonious working of the plan, and I never heard that there was any, where it has been tried. But I can see that there may, perhaps, be a difficulty at the first, although even for this interregnum of a month, or, it may be, for two or three months, before the enactment of any law on the subject by the Legislature, I do not know but the matter might be arranged by a rule of the court; and if not, at any rate, we can fix it in the Schedule.

The CHAIRMAN. The Chair will remind gentlemen that the question is on the motion to strike out Section 9.

Mr. BANKS. I think it is quite important that we should understand this matter, at any rate. Now, sir, with three judges constituting one court, and each with the same power, and all the power of the court, I want to know how it would work in a case like this: Suppose I bring a suit before one of those judges, and he decides it in a certain way, but the other two do not view the matter as he does—then, in the same case, an appeal is taken; is that an appeal from the judge who decided the case, or from the court?

Mr. BROSNAN. You do not bring your case before the judge individually, but before the court.

Mr. DeLONG. Some one judge tries the case, and you take your appeal not from his decision, but from the judgment of the First District Court.

Mr. BANKS. But suppose the other judges do not concur in that judgment?

Mr. DeLONG. They have nothing to say about it, any more than if they were in another district altogether.

Mr. BANKS. Then we have the anomaly of an appeal from one court, consisting of three persons, when a majority of that court would have decided the other way.

Mr. DeLONG. I would really recommend the gentlemen to the study of the law.

Mr. BANKS. I will make the same recommendation to the gentleman from Storey. [Merriment.]

Mr. WARWICK. I do not see any difficulty in this matter. In the first place, these judges have nothing to do with each others' decisions, because each one sits as a separate court. The calendar is divided between them, and any decision by either one of them is appealable to the Supreme Court. It is not a decision of a majority, or of an individual judge, but a decision of the court rendered by that one of the judges who has tried the cause. The calendar is divided between them, just as we divide our business here between the several committees, as we may agree among ourselves, but with this distinction, that each judge tries, and makes the final disposition of each cause upon his portion of the calendar. It amounts to the same thing, in that respect, as if there were three courts; we simply make it one district, because we do not wish to allow litigants to exercise their own preferences as to particular judges. We want the calendar made up, and divided, in the first place, by lot, it may be, and then each judge has full and entire jurisdiction and control over that portion of the calendar which has been allotted to him.

Mr. DeLONG. What prevents the occurrence of the anomaly which is apprehended by the gentleman from San Francisco [Merriment,] or rather I should say from Humboldt, (Mr. Banks,) is the fact that the judgment of each judge becomes the judgment of the First District Court. The other judges have nothing to say about the particular case he decides, and therefore no such phenomenon as a judgment of the First District Court against the opinion of two of its judges, can by any possibility happen. The other judges, having nothing to do with the case, of course can give no opinion concerning it.

Mr. BANKS. All I want is to have a clear understanding of the matter, and if other members of the committee can see plainly that no such difficult complication can arise, then all I have to say is, that I cordially congratulate them upon their wonderful acumen. I understand now that the theory of the plan is this: that the District Court of Storey County shall have authority to delegate all its power to any of its judges; that they divide up the work between them; that the whole court says to A, B, and C, first that A shall take a certain portion of cases, and whatever he decides shall be the judgment of the court; then that B shall take another portion, and so on in regard to each of the judges.

Mr. JOHNSON. I deny, in advance, that there is or can be any power under this Constitution to divide these duties and responsibilities, and I assume that you must have the judgment of a majority of the court, at least, in order to render such judgment effective. Now, sir, this is the anomaly: you provide for your three judges in one district, but where is there anything contained in this Constitution

by which it is declared that each one of these judges shall have the same power that all the others have? If you provide for three judges in one district, it will be absolutely necessary that you shall adopt some provision to regulate their action.

Gentlemen have spoken of the operation of the system under the Constitution of the State of New York, but I do not find any such provision in that Constitution. They have Supreme Courts in that State, each consisting of four judges, one of whom is the presiding judge at the general term. I will read from Article VI. of the Constitution of New York, the provisions in relation to the Court of Appeals and the Supreme Court.

Sec. 2. There shall be a Court of Appeals, consisted of eight judges, of whom four shall be elected by the electors of the State for eight years, and four selected from the class of Justices of the Supreme Court having the shortest time to serve. Provision shall be made by law for designating one of the number elected, as Chief Judge, and for selecting such Justices of the Supreme Court, from time to time, and for an classifying those elected that one shall be elected every second year.

Sec. 3. There shall be a Supreme Court having general jurisdiction in law and equity.

Sec. 4. The State shall be divided into eight Judicial Districts, of which the city of New York shall be one; the others to be formed by county lines, and to be compact, and equal in population, as nearly as may be. There shall be four Justices of the Supreme Court in each district, and as many more in the district composed of the city of New York as may from time to time be authorized by law, etc.

Mr. DeLONG. I wish to call the gentleman's attention to the constitutional provision in this article which prevents the difficulty he apprehends. I understand him to say there is no power in the Constitution for dividing their labors; but Section 5, which we have already adopted, says that the First Judicial District shall have three District Judges, "who shall possess co-extensive and concurrent jurisdiction."

Mr. JOHNSON. But how would you divide the business of the court? Where is the provision of the Constitution, or the power conferred, to enact a law for that purpose? There is nothing whatever of that nature contained in it.

Mr. DeLONG. Every court has power to regulate that matter by rule.

Mr. JOHNSON. I was about proceeding to speak of that power. Now, without occupying further time by quoting from the Constitution of New York, I submit that there is no such provision contained in this instrument—none whatever. And the very fact that they have the power which are there conferred disproves the proposition of the gentleman from Wenhoe (Mr. Noyes.) Because in New York the Supreme Court is but one court, presided over by one judge at the general term, at which motions may be heard, and other business transacted. The absence of any provision here for separate courts is very material. I insist, therefore, that the proposition before us is for the creation of a thorough system, a parallel to which you can not find in any State, nor anything analogous to it. And I will say in regard to it this much, that you are venturing upon experimental ground—upon a system that is wholly untried, that is entirely new. For I believe it is unlike anything to be found in the Constitution of any other State, and if I am incorrect in that, I shall be happy to be set right, by any gentleman who possesses more extensive or more accurate knowledge than I do upon the subject.

In my judgment, if we are going to adopt this experiment, it is certainly very essential that we should incorporate some further provision in this article, of a character similar to what I have suggested, and I can see no difficulty in the way of adopting some such provision. One gentleman has suggested that by having separate courts, litigants will prefer proceeding before some particular District Judge, and thus one court would have all the business to the exclusion of the others. I see no reason why such should be the result. We know that in San Francisco they have had for several years two District Courts, with concurrent jurisdiction, and have quite recently established another, making the third District Court in that city; and I have never heard of any such difficulty arising there. But with the plan here proposed, I can foresee insuperable obstacles, as they appear to me, which will have to be encountered from the very inception of the court, and more especially will that be the case at the beginning, during the period intervening between the organization of the court and the time when the Legislature may enact laws providing for this novel system, and putting it into working order. There may be a controversy between the judges as to who shall exercise the criminal jurisdiction of the court, and especially in regard to that power we ought most certainly to prescribe the officer who shall perform those particular functions in the outset.

In relation to all of these matters, the article does not seem to have been well digested, probably for the reason that it was originally intended that the County Court should exercise exclusively this criminal jurisdiction. Hence it is quite apparent that all of our troubles now result from the abandonment of that system which had been well digested, and the substitution of another in its place. I present these views more particularly to the consideration of the members from Storey County, which is immediately interested.

Mr. BINGHAM. I rise merely for the purpose of stating to the gentleman from Ormsby, (Mr. Johnson,) that the Supreme Court of New York, to which he has referred, has an appellate power over each of the justices that compose that court. They are District Judges at the same time that they constitute a Supreme Court, and there is the Court of Appeals, back of them. There are four Supreme Court Justices in each district, and they each do circuit

business, and also sit in bank in review of the decisions and judgments of the District Courts, the individual judge whose decision is to be passed upon not sitting in that case in the court of review; and then from the decision of these three judges of the Supreme Court there is a still further appeal to the Court of Appeals. That is the system in operation in New York.

Mr. JOHNSON. Permit me to ask one question which may relieve my mind from embarrassment. It refers to this very point of difference. Is there, under the judicial system of New York, a court organized, in any manner analogous to this which is proposed for Storey County?

Mr. BROSNAN. There is, in the city of New York, but not in the State, outside of the city. The State has District and Supreme Courts, something like the system which we have here at present. The judges go out into their respective districts and sit by themselves; and then they have general terms in which all the judges of the Supreme Court meet, and cases come back to that court on appeal, that is, by appeal from the decisions of the judges of that particular district, which consists of four judges, the State being divided into eight judicial districts. The cases which are tried by the different judges come up on appeal to the united bench; that is to say, the District Judges constituting the Supreme Court Judges, the person whose case is being heard or argued not sitting himself, in judgment on that case. The provision made here in regard to the Court in Storey County is the same as that, except that here there is no appeal from the decision of one judge to the other members of the court, but the appeal is immediately from the District Court to the Supreme Court, which is our court of last resort. There may be, however, something well worthy of consideration in the suggestion of the gentleman from Ormsby relative to a provision for the possible interregnum which may exist between the primary organization of the court and the time when action may be taken by the Legislature.

Mr. JOHNSON. I do not think I fully understand this matter yet. Does the gentleman state that there is, or is not, any court in the city or the State of New York like this which is proposed for Storey County?

Mr. BROSNAN. I said there was, in the city of New York. I referred to the Superior Court.

Mr. NOURSE. And the Supreme Court, also, in the city of New York. If the gentleman will allow me, I will read from the Constitution of the State of New York on that subject. In New York, as the gentleman from Storey (Mr. Brosnan,) states, there are seven districts, besides the New York District, and they have their special terms. In the country there are four judges for each district, and they divide their districts into circuits, each one of the judges taking a circuit and holding courts therein; one judge taking one circuit, another taking another, and so on. Then, as the gentleman from Storey has said, at these special terms an appeal may be taken in any case, to the three judges who did not try it, and such appeals are heard at the "general term," as it is called. But in the city of New York the district is all one, and is precisely analogous to what is here proposed. Instead of dividing the district into circuits, as in the country, they divide the calendar, and each judge, sitting independently, tries the the causes which may be assigned to him. And yet here is all there is on the subject in the Constitution of the State of New York:

"SEC. 4. The State shall be divided into eight judicial districts, of which the city of New York shall be one; the others to be bounded by county lines, and to be compact and equal in population, as nearly as may be. There shall be four Justices of the Supreme Court in each district, and as many more in the district composed of the city of New York as may from time to time be authorized by law, but not to exceed in the whole such number, in proportion to its population, as shall be in conformity with the number of such judges in the residue of the State, in proportion to its population. They shall be classified so that one of the Justices of each district shall go out of office at the end of every two years. After the expiration of their terms, under such classification, the term of their office shall be eight years."

And that is all there is of it, except a subsequent section in regard to the classification of the Supreme Court. I will read that section, also.

"SEC. 9. The classification of the Justices of the Supreme Court, the times and places of holding the terms of the Court of Appeals, and of the general and special terms of the Supreme Court, within the several districts, and the Circuit Courts, and Courts of Oyer and Terminer within the several counties, shall be provided for by law."

That is all there is in regard to the matter, in the Constitution of New York, and yet the Supreme Court in the city of New York divides its calendar, and does precisely what we propose to provide for the Storey County District Court.

Mr. JOHNSON. If the gentleman will read further, I think he will find much more in it.

Mr. NOURSE. No, sir; there is nothing more about the Supreme Court. The Superior Court has been mentioned, also. Well, that is another exception. However, it is only necessary to say, that both the Supreme Court and the Superior Court do business in that way. Now I cannot understand how there should be this difficulty arising with three judges, when it was all so easy with two judges in the Storey County District Court, as at first reported by the Judiciary Committee.

Mr. JOHNSON. The gentleman from Washoe will bear me witness that I urged these same views before the Judiciary Committee, and also on a previous occasion in the Convention. I foreshadowed the difficulties that would be likely to arise, and insisted in the committee upon numerical districts—that either ther

should be a geographical division of the districts, or at least they should be numbered, so as to be separate and distinct. Possibly, however, the gentleman was not present at the time.

Mr. NOURSE. Of course it is so, if the gentleman says so, but I only recollect of his objecting to the third judge very much, and that he wanted a County Court.

Mr. JOHNSON. As to that, I cared nothing about it. If the members from Storey County wanted three districts, I was willing that they should have them.

Mr. NOURSE. I do not think that when the gentleman first took the ground he did, there was a majority that way in the committee; I imagine that the gentleman rather carried the majority with him. But that is not of material consequence. What we want, is to establish a judicial system that will work. We have no desire to provide for any system but one that will always be efficient. At the same time, however, I believe that we may safely trust to the precedent of New York. There is no State in the Union whose system is more analogous to ours in other respects, and none whose judicial system has, as a general thing, operated more satisfactorily. Hence I feel perfectly safe in following that precedent, and think it is a much better and safer one to follow than that of San Francisco. The plan has been tried in New York for years and years, and is well approved and established. They have not provided in their Constitution for all the matters of minutiæ as much as we have in this article, but rather have preferred to leave those things to the laws, and the courts themselves. For my part, I would feel entirely safe to leave the subject to a rule of the court.

Mr. JOHNSON. I do not understand the operation of the Supreme Court of New York to be at all as the gentleman states it. In fact, my understanding of that subject is very different.

The CHAIRMAN. The question is on the motion to strike out Section 9.

Mr. DELONG. Why, nobody opposes that. [Merriment.]

The CHAIRMAN. This whole discussion has been, strictly speaking, out of order, but it has been tolerated by the consent of the committee, and I do not apprehend that it has been by any means unprofitable.

Mr. DUNNE. I would like to add a few words. I cannot admit that the rules which govern the Supreme Courts of the State of New York afford any proper precedent whatever for our guidance, in the establishment of a court in Storey County, on the basis proposed; and for the reason that causes are to come before the proposed court in Storey County, as a court, originally, whereas, in the Supreme Court of New York, causes do not come up before the court originally, as I understand, but are brought originally in the District Courts, which seem to correspond in their status very nearly with the District Courts as they now exist in this Territory; and then appeals are taken from those District Courts to the Supreme Court, the same as they are in this Territory. It is not, therefore, a division by the Supreme Court of work before it, consisting of cases coming originally before it, and divided by the court into districts, assigning one judge to go into a particular district, and try certain cases, and another to go into another district to try certain other cases, and so on, as we propose in the Storey County District Court; but all the cases arise in the districts first, are there tried by the district judges, and are then brought upon appeals before the Supreme Court, as in this Territory. That is the way I understand it, from the statements which have been made here.

Mr. DELONG. The gentleman is mistaken. The New York Supreme Court has original jurisdiction, as much as the District Court of Storey County will have.

Mr. DUNNE. Then, when the Supreme Court has original jurisdiction, can a case be referred in this manner to a District Court?

Mr. DELONG. No, no! The gentleman does not understand the matter yet. The City and County of New York constitute one district, and that district is not subdivided geographically, but there are four Supreme Judges, and they have original business.

Mr. BANKS. I wish to ask the gentleman from Storey a question. Is there any such thing under that system as an appeal from one member of that court directly to the highest court?

Mr. DELONG. The Court of Appeals? Certainly.

Mr. BANKS. Is not it only over an appeal to the united court in the first instance?

Mr. DELONG. No, sir. The Supreme Court sits in bank, on cases in the District Courts, and whenever cases are commenced in the Supreme Court, then appeals may be taken to the appellate court, or Court of Appeals.

Mr. BANKS. The whole question turns, it appears to me, on a difference of opinion between the gentleman from Ormsby, (Mr. Johnson,) who has the Constitution of New York to refer to, and the gentleman from Storey, (Mr. DeLong,) who has it not.

Mr. JOHNSON. Now, sir, I will undertake to say that they have not, and cannot have any such thing as a District Court, under the Constitution of New York. And everything which the gentleman from Washoe (Mr. Nourse) has read from that Constitution goes to prove that we are adopting here a mongrel system, which will not be self-acting, nor have we conferred any authority upon the law-making power by which it can be rendered operative. The gentleman from Washoe says there is not much in the constitutional provision which creates that Supreme Court in New York. That is very true; but, sir, a few words may express a great deal. I will read Section 6, which follows the provision creating the Supreme Courts.

"SECTION 6. Provision may be made by law for designating, from time to time, one or more of the said Justices, who is not a judge of the Court of Appeals, to preside at the general terms of the said court, to be held in the several districts. Any three or more of the said Justices, of whom one of the Justices so designated shall always be one, may hold such general terms. And any one or more of the Justices may hold *special terms, and Circuit Courts*, and any one of them may preside in Courts of Oyer and Terminer in any county.

These are but few words, as the gentleman says, but they express that very power with which the court is clothed, and without such words they could not possess that power.

Mr. NOURSE. I think we can fix this matter during recess, and I move that the committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to, and the committee accordingly rose.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article VI, entitled Judicial Department, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

Mr. DUNNE gave notice of a meeting of the Committee on Schedule during the recess.

Mr. CHAPIN. This question of the courts in Storey County has now been under discussion for a long time, and it seems to me is liable to be debated for hours longer. I suggest that it be recommitted to the Judiciary Committee, to be considered by that committee during the recess. It will be a great point gained if the committee can harmonise the matter so as to avoid further discussion.

Mr. NOURSE. They can consider it informally just as well. I move that the Convention take a recess.

The hour of twelve o'clock having arrived,

The PRESIDENT declared the Convention at recess until two o'clock, P. M.

AFTERNOON SESSION.

The Convention met at two o'clock, P. M., and was called to order by the President.

The SECRETARY, by direction of the President, counted the Convention and reported that twenty-one members were present.

ARTICLES ENGROSSED.

Mr. CROSMAN, from the Committee on Engrossment, reported correctly engrossed Article XI, entitled Salaries and Appropriations; Article XII, entitled Education; and Article XVI, entitled Miscellaneous Provisions.

The report was accepted, and the several articles reported were placed on the general file for third reading.

Mr. KENNEDY. Could not we place those articles on their third reading now, so as to give them to the Enrolling Committee this afternoon?

The PRESIDENT. That may be done by suspending the rules.

Mr. KENNEDY. I move that the rules be suspended, and the articles placed on their third reading and final passage.

SALARIES.

The PRESIDENT. The Chair will state that the Article on Salaries was transferred to the Schedule by a resolution adopted this morning. Consequently, that will lie over, and be considered with the Schedule, when that article is again taken up.

Mr. DUNNE. It was not referred, I understand, but merely ordered to be inserted in the Schedule.

Mr. KENNEDY. I will omit that from my motion, and only move that the rules be suspended, and Articles XII and XVI be placed upon their third reading now.

The question was taken, and the motion was agreed to.

EDUCATION.

Article XII, entitled Education, was read a third time, as follows:

ARTICLE XII.

EDUCATION.

SECTION 1. The Legislature shall encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election, by the people, at the general election, of a Superintendent of Public Instruction, whose term of office shall be two years from the first Monday of January, 1863, and until the election and the qualification of his successor, and whose duties shall be prescribed by law.

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction; and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

SEC. 3. All lands, including the sixteenth and thirty-sixth sections in every township, donated for the benefit of public schools, in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2d, 1862, for each Senator and Representative in Congress; and all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this State; and also the five hundred thousand (500,000) acres of land granted to the new States under the Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841;—*provided*, that Congress make provisions for, or authorize such diversion to be made, for the purposes herein contained; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes

and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources, in United States bonds, or the bonds of this State; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; and provided further, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

SEC. 4. The Legislature shall provide for the establishment of a State University, which shall embrace departments for agriculture, mechanic arts, and mining, to be controlled by a Board of Regents, whose duties shall be prescribed by law.

SEC. 5. The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may see fit; and all professors in said University, or teachers in said common schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article XVI of this Constitution. No professor or teacher who fails to comply with the provision of any law framed in accordance with the provisions of this section, shall be entitled to receive any portion of the public moneys set apart for school purposes.

SEC. 6. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said University and common schools; *provided*, that at the end of ten years they may reduce said tax to one quarter of one mill on each dollar of taxable property.

SEC. 7. The Governor, Secretary of State, and the Superintendent of Public Instruction, shall for the first four years, and until their successors are elected and qualified, be a Board of Regents to control and manage the affairs of the University, and the funds of the same, under such regulations as may be provided by law; but the Legislature shall, at its regular session next preceding the expiration of the term of office of said Board of Regents, provide for the election of a new Board of Regents, and define their duties.

SEC. 8. The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said mining department, in such manner as to make it most effective and useful. *Provided*, that all the proceeds of the public lands donated by Act of Congress, approved July 2nd, 1862, for a college for the benefit of agriculture and mechanic arts, and including military tactics, shall be invested by the said Board of Regents in a separate fund to be appropriated exclusively for the benefit of the first-named departments to the University, as set forth in Section 4, above. And the Legislature shall provide that, if through neglect or any other contingency, any portion of the fund so set apart shall be lost or misappropriated, the State of Nevada shall replace said amount so lost in said fund, so that the capital of said fund shall remain forever undiminished.

SECTARIAN INSTRUCTION.

Mr. BROSNAN. I ask that Section 2 may be read again.

The SECRETARY again read Section 2.

Mr. BROSNAN. I see that in this section it is provided as a condition precedent to obtaining the school money, or to any school district being entitled to its proportion of the interest on the school fund, that a school shall have been established in such district for six months in every year. Then, in the succeeding clause, there is a provision that unless that is done, or in case of any sectarian instruction being imparted in such school, the district shall forfeit the benefit of the school money, or lose its proportion thereof. For my part, I should like to have it stated as clearly in the section, that no sectarian instruction shall be imparted or taught, as it is that a school shall be maintained for six months in the year, as a condition precedent to permitting the district to receive its proportion of the interest on the school fund. As the section stands at present, there is no positive prohibition against imparting sectarian instruction, the only penalty being the forfeiture of the school money. I am, myself, decidedly and strenuously opposed to the inculcation, upon the juvenile mind in the public schools, of anything like sectarian instruction, no matter of what character or description it may be, and therefore I would suggest that the section be amended, if it may be done, by inserting after the words "shall be established and maintained in each school district, at least six months in every year," the words "but no sectarian instruction shall be allowed in any public school so established." Then the section will provide not only that a school shall be required to be maintained in each district for at least six months in the year, but also that any district neglecting to establish and maintain such school, or imparting sectarian instruction therein, shall be deprived of its proportion of the school money. I think the section as it reads at present does not reach that object, and the words which I propose to insert are taken from the section as it stood in the former Constitution, which we have heretofore adopted. If it be necessary to state, as a condition precedent to the receiving of the public moneys, that a school shall have been conducted for six months in the year, I take it to be equally necessary, or, if not as necessary, at least as appropriate, (inasmuch as we all agree upon the general proposition that there should not be in the common schools the inculcation of any sectarian doctrines upon the infant minds of pupils,) to state that the exclusion of sectarian instruction shall in like manner be a condition precedent.

The PRESIDENT. The amendment can be made at this time by unanimous consent, but there is similar language occurring in the latter part of the section, which will need to be stricken out.

Mr. BROSNAN. The language in the latter part of the section, as printed, has already been stricken out.

The PRESIDENT. The gentleman's point is, as I understand, that the section as it now reads permits the establishment of sectarian instruction, and only prohibits the district from receiving the school money, if sectarian instruction is established.

Mr. BROSNAN. Yes, sir. My amendment is to insert after the word "year," in the sixth line of the engrossed copy, the words "but no

sectarian instruction shall be allowed in any school so established."

Mr. COLLINS. I would inquire whether it would not be proper to incorporate a new section, in regard to the organization of colleges, etc.? We might declare that in none of the schools named above, shall any sectarian doctrine be taught. That would make the prohibition positive as to all the schools, while this section relates only to drawing the school money for the common schools.

Mr. BROSNAN. I do not know but that would be as well, if such is the sense of the Convention.

Mr. COLLINS. I think there is now nothing of the kind, in regard to instruction in the University.

Mr. CROSMAN. If I correctly understand the gentleman from Storey, my impression is that the section as it stands now, covers the ground he wishes. If the people of a neighborhood, made up largely of one particular religious element, desire to establish a school of their own denomination, I presume no gentleman here wants to preclude them.

Mr. BANKS. That would not be a public school.

Mr. CROSMAN. No, sir; then it is not a public school; and therefore I understand that the section, as it now stands, fully covers all that is desired. A school established by a district, if it shall tolerate sectarian instruction, cannot receive the money or aid of the State, and is not under the patronage of the State. It constitutes no part of the general educational interest.

Mr. BROSNAN. The idea is this: I think that if a school is established in any district, under the law, it is a public school. Now, such a school may, under this section, establish sectarian instruction. Through what influences it may occur, I will not undertake to say, but there may be taught in such a school sectarian doctrines, if it shall please those who control it; subject, I admit, to the forfeiture of the right of the school to receive its proportion of the public school money. But, nevertheless, it is still a public school, that being the only prohibition there is against such instruction. My desire is that the prohibition of sectarian instruction shall be as positive and as clearly expressed as is the requirement that the district shall maintain a school for six months in the year, and I wish to accomplish that purpose by placing both in the same category, and in the same clause. If that is done, and no other change is made in the section, it will meet my views.

Mr. COLLINS. I like the scope and design of the gentleman's remarks, and his amendment, but it occurs to me that this section refers exclusively to the common schools, which are to be maintained at least six months in every year. Then the article goes on to provide for a University, for normal schools, and for different grades of schools, from the primary departments up to the University. It seems to me that it would be better to provide by an additional section that no sectarian doctrine shall be permitted to be taught in any school established under this Constitution. That would cover the entire ground, while this amendment does not prohibit sectarian instruction in the colleges, normal schools, or such other or higher grades of schools, as are not required by Section 2 to be maintained for six months in the year. I think it would be eminently proper to adopt a separate section, declaring that in all the schools, up to and including the University, no sectarian doctrines shall be taught.

Mr. BROSNAN. I will include the University, then; let my amendment apply to all the schools.

The PRESIDENT. The proper motion will be to recommit with instructions.

Mr. COLLINS. I understand there is no objection to the amendment.

The PRESIDENT. The question may be taken in that shape, if there is no objection, and then the amendment can be made at once.

Mr. BROSNAN. If there is any possible objection, I do not wish to take a vote upon it.

Mr. COLLINS. I trust the amendment will be so drawn as to apply generally to all the schools.

Mr. BROSNAN. I will withdraw my amendment, and prepare a separate section for that purpose.

Mr. HAWLEY. The proposition of the gentleman from Storey, if I understand him correctly, is now so modified that he asks leave to have the article recommitted, with a view to incorporating a section which will prohibit sectarian instruction in all departments of the public schools, the primary branches included.

The PRESIDENT. So I understand. But if unanimous consent is given, the amendment may be made in that manner, instead of by recommitment.

Mr. BROSNAN. I have drawn a section, in order to carry out the view of my colleague, (Mr. Collins.) Instead of making any change in Section 2, as I had proposed, I will withdraw that amendment, and will now propose, with the consent of the Convention, to add to the article the following, as an additional section:

SEC. 9. No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this Constitution.

The amendment was agreed to by unanimous consent.

THE SPECIAL SCHOOL TAX.

Mr. CHAPIN. I would like to make a further amendment, and I presume there will be no objection to it. It is a slight change in Section 6. That section now provides that a special tax shall be levied by the Legislature, for the benefit of "said University and common schools," and I propose to alter it so as to read in this wise: "for the support and mainte-

nance of said University, common schools, or mining department." Then the Legislature may, in the exercise of its wisdom, appropriate either the whole or a portion of the tax to the mining department, whenever it shall be found necessary.

Mr. CROSMAN. Is it not stated in a preceding section that the Legislature shall establish a State University, with a mining department? It seems to me that covers the case entirely, the mining department being a portion of the University.

Mr. CHAPIN. But here is a special tax to be levied, and it is specified what the tax shall be for.

Mr. CROSMAN. But the University is one of the objects specified, and we have previously declared that the University shall embrace a mining department.

Mr. COLLINS. The difficulty of my colleague appears to be this: The proceeds of the ninety thousand acres of the public lands granted by the Act of Congress of July 2d, 1862, are set apart exclusively for the benefit of agriculture and the mechanic arts, and my colleague, regarding the mining department as one of the most important branches of our educational interests, at any rate next in importance to the common schools, desires to have the matter so arranged that the proceeds of this special tax may, in the discretion of the Legislature, be set apart exclusively for the benefit of the mining department. Now it occurred to me when the section was drawn up, that the terms "university" and "common schools," both occurring, the construction must be that the tax is to be levied for the benefit of the public school fund; and as that fund comes under the control of the Board of Regents, that Board will have the right to appropriate this tax, or any portion of it, as well as other funds, (excepting, of course, that which is specially reserved, in conformity with the Act of Congress,) to any branch of education the Board may deem proper, whether it be the University, the mining department, a scientific school, or the public schools; or even to the higher grades of public schools, such as normal, or high schools, and academies. It appears to me that it comes within the province and the right of the Board of Regents to appropriate this special tax as they please; but if there is the least doubt on this subject in the minds of members of the Convention, I hope the amendment will be adopted.

The PRESIDENT. I would ask the gentleman if he does not regard the language of the section, at present, as being sufficiently comprehensive?

Mr. COLLINS. It seems to me so.

The PRESIDENT. Then I will take the liberty to suggest that, the article having been engrossed, it is very desirable to avoid making any amendments, unless they are absolutely necessary.

Mr. COLLINS. I would like to have the opinion of the President on the matter I have suggested.

The PRESIDENT. Let the Secretary read the section.

The SECRETARY read Section 6.

Mr. COLLINS. Now let him read Section 4.

The SECRETARY read Section 4.

The PRESIDENT. I understand that the mining department is made a part of the University.

Mr. CROSMAN. I think so.

The PRESIDENT. I think there can be no question as to that. It is one of the departments of the University, and when the term "University" is used, it must be understood as including the mining department.

Mr. CHAPIN. I was fearful, probably without having sufficiently examined the subject, that the language would not cover the mining department, and I did not want any doubt left upon that point, because I consider that as the most important institution we shall have within the borders of our State; and I regretted very much that the amendment proposed the other day by the gentleman from Washoe (Mr. Nourse) was not adopted, devoting this tax exclusively to the mining department. As, however, the opinion of the Convention seems to be clear upon the construction of the language, I withdraw the amendment.

The question was taken by yeas and nays on the final passage of the article as amended, and the vote was—yeas, 23; nays, none—as follows:

Yeas—Messrs. Banks, Belden, Brosnan, Chapin, Collins, Crawford, Crosman, DeLong, Dunne, Frisall, Felson, Gibson, Hawley, Kennedy, Kinkead, Lockwood, Mason, Murdock, Nourse, Parker, Tagliabue, Wetherill, and Mr. President—23.

Nays—None.

So the article was passed.

MISCELLANEOUS PROVISIONS.

Article XVI, entitled Miscellaneous Provisions, was read a third time, as follows:

ARTICLE XVI.

MISCELLANEOUS PROVISIONS.

SECTION 1. The seat of government shall be at Carson City, but no appropriation for the erection or purchase of capitol buildings shall be made during the next three years.

SEC. 2. Members of the Legislature, and all officers, Executive, Judicial, and Ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation:

"I ——, do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State, Convention or Legislature to the contrary notwithstanding; and farther, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear (or affirm) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge, or acceptance, since the adoption of the Constitution of the State of Nevada, and that I will not be so

engaged or concerned, directly or indirectly, in or about any such duel, during my continuance in office. And further, that I will well and faithfully perform all the duties of the office of ——— on which I am about to enter; so help me God."

SEC. 3. No person shall be eligible to any office who is not a qualified elector, or who has fought or been in any manner concerned in a duel since the adoption of this Constitution.

SEC. 4. The general election shall be held on the Tuesday next after the first Monday of November.

SEC. 5. The aggregate number of members of both branches of the Legislature shall never exceed seventy-five.

SEC. 6. All county officers shall hold their offices at the county seats of their respective counties.

SEC. 7. The Legislature shall provide for the speedy publication of all statute laws of a general nature, and for such decisions of the Supreme Court as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person; *provided*, that no judgment of the Supreme Court shall take effect and be operative until the opinion of the Court in such case shall be filed with the Clerk of said Court.

SEC. 8. The Legislature may at any time provide by law for increasing or diminishing the salaries or compensation of any of the officers whose salaries or compensation is fixed in this Constitution; *provided*, no such change of salary or compensation shall apply to any officer during the term for which he may have been elected.

SEC. 9. All officers whose election or appointment is not otherwise provided for, shall be chosen or appointed as may be prescribed by law.

SEC. 10. The tenure of any office not herein provided for may be declared by law, or when not so declared, such office shall be held during the pleasure of the authority making the appointment; but the Legislature shall not create any office, the tenure of which shall be longer than four years.

SEC. 11. The Governor, Secretary of State, State Treasurer, State Controller, and Clerk of the Supreme Court, shall keep their respective offices at the seat of Government.

SEC. 12. The enumeration of the inhabitants of this State shall be taken under the direction of the Legislature, if deemed necessary, in the year 1865, and 1867, and 1875, and every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States in the year 1870, and every subsequent ten years, shall serve as the basis of representation in both Houses of the Legislature.

SEC. 13. A plurality of votes given at an election by the people, shall constitute a choice, where not otherwise provided by this Constitution.

The PRESIDENT. I will call attention to Section 12, in relation to a State Census. I understood it was proposed to make an amendment, to obviate the necessity of taking the census, at the expense of the State, if it is done by the General Government.

Mr. DUNNE. I offered the amendment, and it was adopted. It now provides only that the census "shall be taken under the direction of the Legislature, if deemed necessary." I think that is sufficient.

DISFRANCHISEMENT OF DUELISTS.

Mr. BANKS. I move to refer Section 3 of this article to a special committee, with instructions to insert in lieu thereof the following, and report immediately:

SEC. 3. No person shall be eligible to any office who is not a qualified elector. No person who, while a citizen of this State, has, since the adoption of this Constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this State, or who has acted as second, or knowingly conveyed a challenge, or aided or assisted in any manner those thus offending, shall be allowed to hold any office of honor, profit, or trust, or enjoy the right of suffrage under this Constitution. The Legislature shall provide by law for giving force and effect to this section.

Mr. COLLINS. I second the amendment offered by the gentleman from Humboldt, and I do so from a conviction that the time has arrived when every civilized community, at least every community in our country that aspires to the dignity of a State Government, should, in its organic law, declare its decided and permanent hostility to the barbarous institution of dueling. And, sir, I marvel somewhat that those who framed and perfected the Constitution which was submitted to the people last year, did not go further than they did in this matter.

The proposition embodied in this amendment is nothing new. There are States in the Union which have gone far beyond this provision, in regard to dueling. Several of them—three, at least, namely: Connecticut, Michigan, and California—have embodied in their Constitutions provisions which, if not identical, are very similar to this, whilst in Virginia and Missouri, not only is there a disqualification for holding office, but there is a constitutional requirement that the Legislatures of those States shall pass laws by which the estate of the successful duelist shall be charged with the support of the widow and orphans of his unfortunate antagonist. In Alabama, Iowa, Indiana, and Ohio, constitutional provisions have been adopted which go quite as far as was proposed in the Constitution of last year—that is, disqualifying any person who may be engaged in a duel from holding office.

One objection has been found to exist to laws against dueling, especially in some of the older States of the Union, where the penalty prescribed has been death, namely, that the severity of such laws defeated their operation. It has been found very difficult, if not impossible, to convict a man who has slain another in a duel. But here are two severe penalties, which, in my judgment, it is entirely practicable to enforce. The man who infracts the prohibition against dueling, it is provided shall be deprived of the right to hold office, and shall also be deprived of the right of voting; and these are two privileges which in our country are regarded as especially valuable and sacred. They are held in greater esteem by many than silver or gold, and therefore the establishment of such a penalty as the forfeiture of these privileges, must, in my judgment, have a very powerful influence in restraining men from the commission of such acts of violence—acts which I feel justified in characterizing as cold-blooded murder. I may have some sympathy with an individual who, in the heat of passion, while his blood is boiling in his veins, may commit a homicide, but I can have no sympathy with the man who coolly and deliberately re-

solves on the means by which he takes the life of his fellow-being. Consequently, I have no sympathy with the duellist.

There has been on this coast some sort of public sentiment which has tolerated the practice of dueling to some extent, and even justified it in many instances. But at the present time, and in our State, any such public sentiment ought to be discountenanced and frowned upon. When the spirit of the so-called "chivalry," that had at one time an important influence in the control of the destinies of California, bore full sway, dueling was rife in that State. Men from the Northern and Eastern States, coming in contact with that arrogant class of men from the Southern States, and receiving insults at their hands, naturally desired to show them that they possessed all the spirit and manhood necessary to protect themselves, and hence the State of California has been made a battle-ground for duellists. But there is no good reason why we should permit such a condition of things to exist in our State. There is no reason why we should not lay it down as a fundamental principle, that no man shall be allowed to take the law into his own hands. Just in proportion as you suffer men in the community to take the law into their own hands, just in that proportion do you weaken the government, and sap it of its strength. Every man is then allowed to become as it were a law unto himself and his neighbor. In California, the northern spirit having become aroused, as I have said, by men of the "chivalry" stamp, during the first six years of the State organization not less than thirty-six duels were fought, several of them having a fatal termination; and unless we take measures to prevent it now, while we are forming our fundamental law, unless we shall lay the axe at the root of the tree, we may reasonably anticipate a repetition of those scenes in our own State, and our government will thus be sapped of its power and weakened of its influence; for I contend that government is only strong when the laws are respected and enforced, and when the persons and the character of men are held most sacred.

The PRESIDENT. The gentleman's time has expired.

Mr. BROSNAN. I am undergoing a mental struggle at the present time, in regard to the amendment which the gentleman from Humboldt has proposed. It is not a very easy matter for me to give the reasons for the position which I occupy, at my present time of life, especially when I am limited to five minutes; but I will say that if I vote for this amendment, as I very probably may, it will be a revolution—a complete change from the convictions and habits of thought, resulting from the whole course of the associations and teachings of my past life. Perhaps it is better that it is so, because if I vote for this proposition, I mean to uphold and defend it. I have seen occasions, Mr. President, and may see such occasions again, where the enforcement of such a provision, if it would not strike down the spirit of a man, would, at least, subject him to the contumely of his fellows, to a greater or less extent. It is hard to subjugate the human will, especially when it is invoked in the support of a man's honor and standing among his fellow-men. Xerxes thought to chain the Adriatic, but he failed. So, too, the haughty Dane would fain have checked the overflow of the advancing tide from Neptune's dominions, but failed in his attempt. And philosophers, in the Augustan era of English literature, have said, as I think, wisely and truly, that—

"Men dreamed that they could silence at their will
The storms of passion, and say—'Peace; be still!'
But 'thus far and no farther,' when addressed
To wild wave, or to wilder human breast,
Implies authority that never can,
And never ought to be, allied to man."

I say, Mr. President, that if I shall vote for this proposition, (and at the present stage of my life I may very likely do so,) it will be a change in the whole course of my life—in the whole course of my teachings; yet, if I can be fully convinced that it will be a public benefit, I shall no longer hesitate to give it my vote.

I did not propose to say anything further at this time, but there is one thing I will add. My learned colleague, (Mr. Collins,) in speaking about the penalties attached to duellists and dueling, has mentioned the fact that in some of the States of the Union the successful combatant in a duel is bound by law to sustain the family of him who has fallen. It has been within my knowledge, sir, that that penalty has been prescribed by law in the State of California, and I have known the author of that law to be himself the first to infringe upon its requirements, and violate its provisions, disregarding the very statute of which he had been the framer and introducer in the Legislature of that State; thus spurning all respect for that solemnity which should attach to the laws of the land. I mention this as one of the reasons which induce me, or, at any rate, have some tendency towards inducing me to vote against the provision. I fear that men will disregard it, and if it is not regarded, it is only increasing their guilt. For myself, if I shall vote for it, I shall observe it.

Mr. DELONG. I intend to vote for the amendment, and solely for the reason that I prefer it to the original, inasmuch as the original disfranchises a man from holding office, if he has fought a duel, no matter whether here or elsewhere.

The PRESIDENT. The Chair will state to the gentleman from Storey, that this is offered as a substitute for Section 3, and not for Section 2, which embodies the oath.

Mr. DELONG. Then it seems that a man must swear to it twice. It may be that I am in error, but I honestly believe that the system which it is here proposed to establish, is one well calculated to legislate men into cowardice. By such legislation you cut a man off from the

privilege of defending his honor, and if you do so, you either disfranchise him or make him a coward. Now, sir, I candidly believe, as I live, that if the practice of redressing insults when offered, and of defending the honor when attacked, had been the same at the North as at the South, we would not have had the rebellion that exists to-day. I believe that the idea which prevailed at the North, that the taking of human life is wrong under any and all circumstances, caused northern men to so conduct themselves as to lead southern men to the conclusion that all the men of the North were cowards.

Mr. NOURSE. They have found out their mistake.

Mr. DELONG. Yes; they have now found out their mistake, but nevertheless it has produced that result. Again, it will have the effect to embolden men who are in the habit of scandalising others, and imputing bad motives. Knowing that those whom they malign will not dare to call them to account personally, or, at least, cannot do so without being disfranchised, they will feel that they have immunity for editorial assaults in the newspapers, or for attacking the character of men in conversation—that they can do so without fear of the consequences which might otherwise result from the resentment which such conduct naturally provokes.

Mr. PARKER. If a man who traduces my character is responsible in no other way, cannot I go and "whale" him? [Merriment.]

Mr. DELONG. No, sir; for what is a duel? If it is a combat with pistols, it is also with swords, and if it is with swords, it is with the fists. Any kind of contest, by which one man engages in a fight with another, is a duel.

Mr. NOURSE. Oh, no! A duel is a deadly combat.

Mr. DELONG. But it may not result in death.

Mr. COLLINS. I believe it is defined to be a fight with deadly weapons.

Mr. DELONG. Then the question is, what is a deadly weapon?

Mr. BANKS. That has been defined.

Mr. DELONG. Yes; you can find a dozen different adjudications. It is said that a deadly weapon is anything that will produce death—but that might be a club, and men have often been killed by blows of the fists. If a man kills another in a fight with fists, would he not come under this provision?

Mr. COLLINS. I would certainly want to bring him under it.

Mr. DELONG. I believe it is hopeless to expect to prevent dueling by such extraordinary penalties, and any such law will only result in being totally disregarded. Why, sir, very many of our best men have fought duels, right in the face of statutory and constitutional provisions, which declared them felons at the time they did so. And by this provision, if a man commits that offense, the law being wholly disregarded, you add to it what will impose on his soul the further crime of perjury.

Mr. BANKS. In a conversation I had with an able and eloquent member of the Convention a few days ago, he related to me a circumstance, which very forcibly illustrates the principle upon which I desire to incorporate this amendment. He told me that a friend of his had been challenged by a party to fight a duel; "but," said he, "my friend declined to fight, unless the man who challenged him would first go and pay all his debts, because he did not wish to incur the responsibility of killing the man, and so depriving his creditors of what was justly due them." I regard that as a valid excuse, and want to carry out the principle, by furnishing a good reason for not fighting.

Mr. DELONG. You do not give the excuse exactly right. The law of California imposes as a penalty that the party who kills another in a duel shall pay his debts and provide for his family. This man being challenged, replied to the challenger, "Go and provide for your family and pay your debts, and then I will fight a duel with you."

Mr. BANKS. That makes the illustration better still.

Mr. NOURSE. I shall take ground exactly the converse of that of the gentleman from Storey, (Mr. DeLong.) I shall say that if the state of society which existed at the north had existed at the south, we never should have had a rebellion. That, it seems to me, is the correct statement of the case.

Mr. COLLINS. Hear, hear!

Mr. NOURSE. Now I am not a fighting man. I do not expect ever to have occasion to fight a duel. And yet I never have been willing to believe myself personally a coward. I do not believe there is any necessity for fighting a duel. I have heard of a great many duels for the vindication of men's honor, but I do not believe that any man's honor can be purified in that way. If a man insults or abuses me, I do not gain anything by placing myself in a position to be shot by him, or undertaking to shoot him in return. There is, I admit, at the first blush, some force in the gentleman's argument of restraint—that the fear of being held responsible in a duel may sometimes keep men from using abusive language; that, in short, it may be a check upon men's tongues. And yet that argument is one implying a charge which men would not like to admit, and that is, that nothing but cowardice prevents them from impugning the motives and conduct of others.

I have never lived in the South, but I have seen southern men brought in daily contact with those who might be termed representative men at the North, and I found they were as different in their manners as light and darkness. At the law school which I attended, we found a large number of sons of aristocrats from the South, themselves as aristocratic and haughty as they could be, and every one of them bound to

fight a duel, with pistol or bowie knife, upon what they regarded as proper provocation. I admit that they did have, as I did not always, a thorough acquaintance with those words which constitute the technical grounds for a duel, and they were careful to avoid them; but I never met with a class of men in my life so totally regardless, after all, of what really belongs to the manners of a gentleman. They would not call me a liar, or say I was "no gentleman"—that is the mortal word with them—but they could be more insulting in tone and manner, avoiding the technical cause of offense, than any other men I ever saw. With all their peculiar training, they knew exactly how to act, and what to say, and still not step over the technical line. And I will tell you frankly, that about the only occasion when I ever felt as if I wanted to fight, was when these men, with their insolent manners and supercilious bearing, would pass by us who were northern men. Yet they never said or did anything which we could make a ground of justification for a quarrel. No, sir; I do not think that this dueling system has any real tendency to improve men's manners, abroad or at home. It may be able in some cases to restrain men as to the extent of their words, but that has but little to do with genuine courtesy.

I think, as the gentleman from Humboldt (Mr. Banks,) says, that this provision will give an additional and very proper excuse to men for refusing to fight a duel, and in that way will tend to prevent the practice. While you may not be able to convict men for murder, when they kill other men in duels, yet there will be no difficulty in enforcing this provision, and I think the very class of men who would ordinarily be willing to fight duels, will be extremely glad to avail themselves of the excuse it affords.

The PRESIDENT. The gentleman's time is exhausted.

Mr. MASON. I am very sorry to be obliged to differ on a question of this kind from my friend from Storey, (Mr. DeLong,) but I have been brought up in that part of our land where human life is regarded as of some value, and my teachings have been such that I am decidedly opposed to fighting duels. And I do not believe in exercising my right of suffrage for the elevation to honorable and responsible position of any man, nor that any man should be allowed to hold high position, who would practice dueling, or maintain and defend that peculiar doctrine on which the practice is based—that it is the part of true courage to dare Omnipotence. I have been taught to believe, and do believe, that it is downright presumption, and that true courage is never found in rash adventure. Neither is that properly to be accounted honor which arms one man against another in a private quarrel. I have been brought up, sir, to believe in doctrines of that kind, and I still believe in them. I look upon dueling as wholly wrong in principle—a mere relic of barbarism—wholly inconsistent with modern civilization and enlightenment; and more than that, the voice of Christianity stamps the seal of condemnation upon the policy and the practice. Consequently, I shall support the amendment, and the proposed oath in regard to dueling, entirely and to the letter.

Mr. DELONG. I wish merely to say a word or two in reply to the gentleman from Esmeralda. I was not brought up in a fighting school any more than he, and would engage in a duel no sooner than he would. But I do not subscribe to Mr. Seward's doctrine, that a man who is not a gentleman cannot insult me, and a man who is a gentleman will not insult me.

The PRESIDENT. The gentleman having already spoken his allotted time on this question, is not in order to proceed further.

Mr. HAWLEY. I confess that, consulting only my feelings, I voted for the section embodying the oath, and shall vote for the amendment proposed by the gentleman from Humboldt with some degree of reluctance. But, sir, when I consult my judgment, I have no hesitation whatever in giving my sanction to the measure. I think, however, that the gentleman from Washoe, (Mr. Nourse)—and he will excuse my feeling a little on the subject—does a great injustice to southern gentleman, when he takes a class of fifteen or twenty young men in a northern college, and sets them up as the embodiment of southern manners and southern breeding.

Mr. NOURSE. Allow me to explain. I did not mean to do that. I only say that is as far as my knowledge extends on the subject never having lived at the South. There were seventy or eighty of them, however, and that was their style.

Mr. HAWLEY. Very well; I have met with the same sort of manners among a certain class of young men, but I have always found those who would indulge in such conduct so utterly devoid of brains, as to be unworthy of attention. So much for that.

But, sir, when I cast my eyes along the page of history, and read how Hamilton fell, and how many other men, almost equally distinguished, have fallen, from time to time, upon what is falsely termed the "field of honor;" when I look at the history of the past few years in our sister State of California, I cannot but believe that the blood of the many noble men who have been so untimely taken off, calls loudly upon us for our reprobation of this barbarous system. Now and then cases may arise where men may possibly be justified in even going to the extent of disfranchising themselves, to prove, for instance, the falsity of an assertion that they are cowards; but I believe, sir, that in the vast majority of instances in this country, where this system is resorted to, as a mode of settling differences, the public generally would care but very little if both of those who went out to combat should remain upon the field. What is claimed to be the "honor" of the great majority of those who

in these times resort to the practice of dueling, is a matter of no consideration to the public; but, sir, when the practice of the requirements of the code results in the untimely death of some man of promise, some one who might have been expected to exert great influence for the good of his country, then we can feel the evil of the system, and it becomes our bounden duty, so far as may be in our power, to set upon it the seal of reprobation. Entertaining these views, I shall vote for the amendment, although I doubt the propriety or applicability of some portions of it. That is a matter of detail, however, which may come up hereafter.

Mr. WARWICK. I ask that the amendment be read again.

The SECRETARY read Mr. Banks's amendment.

Mr. NOURSE. Permit me to suggest that perhaps it might be well to change that a little. I do not think we ought to take cognizance of duels which are fought outside of the State, unless one or both parties be citizens of the State.

Mr. BANKS. The President has suggested an addition to the language here employed. It now says that "no person shall be eligible to any office who is not a qualified elector." At his suggestion, and with the permission of the Convention, I will add to that the words "under this Constitution."

Mr. WARWICK. I wish to say a word or two in regard to this amendment. For my own part, I am not only in favor of adopting a provision which will exclude from office the duelist who is a citizen of our own State, but I am also in favor of excluding the imported duelist. I do not think him entitled to any more consideration than one who is native here, and "to the manor born."

Mr. HAWLEY. Allow me to call attention to a portion of Section 2 of Article I, of the Constitution of the United States, which reads as follows:

"No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States; and who shall not, when elected, be an inhabitant of that State in which he shall be chosen."

Now, sir, this language plainly implies that a man who is an inhabitant of this State, that is, of the State of Nevada, who is twenty-five years old, and who, at the time of his election, has been a citizen of the United States for seven years, may be elected to Congress as a representative from this State. These are the only qualifications necessary. It does not even say that he shall be a citizen of the State of Nevada, but only a citizen of the United States for seven years, and an inhabitant of this State. If this amendment shall prevail, it may happen that men will be elected to Congress, or to other and perhaps very important offices, who will be disqualified by such a provision; and while I am disposed to do everything I properly can do to frown down the practice of dueling, yet I do not wish to support any proposition that would render ineligible to office a citizen of the United States and an inhabitant of this State, in contravention of the Constitution of the United States, which we are sworn to support.

The PRESIDENT. The Chair regrets to interrupt the gentleman, but hopes that every member will keep in mind and observe the rule, which permits each member to speak five minutes upon any one subject, but gives no privilege to occupy the attention of the Convention for a longer time.

Mr. WARWICK. I am fully aware of the fact that the gentleman from Douglas suggests, and I do not believe that the State of Nevada will enact any law that is going to do violence to the Constitution of the United States. Nevertheless, I am in favor of enacting a law here which shall place the seal of condemnation on what I regard as one of the most barbarous practices that ever cursed humanity anywhere. Sir, if we are going to allow this vestige of barbarism to exist among us, we might as well go back to the ancient custom of trial by combat for the righting of wrongs, appealing to the Almighty to protect the right. We are here about to form a Constitution for a new, Christian State, and Christian civilization all over the world has, by its legal enactments, given emphatic condemnation to the practice of dueling,—that practice which has robbed the world of some of its best and noblest men. Shall we stand aloof, and in the face of the civilization of the world give our sanction to the practice? If there is a provision of the Constitution of the United States which prevents us from interfering with the qualifications of members of Congress, still there are other offices over which we have entire and perfect control, and let us at least declare that the prohibition shall apply to those officers—that no man shall hold office among us who has indulged in this barbarous practice since the adoption of our Constitution.

Mr. BROSNAN. I ask for the reading of the amendment.

The SECRETARY read the amendment, as modified by the mover.

Mr. BROSNAN. I understand that, as the amendment is framed, it exempts from the penalty any person who has fought a duel, sent or accepted a challenge, or in any manner aided in a duel, outside of the limits of this State.

The PRESIDENT. This inhibition is in addition to that of the preceding section, or Section 2 of the article. Section 2 provides that every man elected to office shall, before entering upon the duties of such office, make oath that he has not fought a duel, sent or accepted a challenge, or in any manner aided or assisted in a duel since the adoption of the Constitution, and that he will not participate in any manner in a duel, during his continuance in office. This substitute for Section 3 goes fur-

ther, and provides that no man who, while a citizen of this State, and since the adoption of this Constitution, has fought or aided in a duel, either within or without the State, shall hold office, or enjoy the right of suffrage. I do not understand that either section exempts a person who has fought a duel after the adoption of the Constitution of this State. Although he may have been a citizen of another State, and fought a duel in another State, yet the form of oath in Section 2 attaches to him, applying as well to one class as the other; and this amendment denies the right of suffrage, as well as the right to hold office, to any man who, while a citizen, has been concerned in a duel. That is the distinction. The amendment, as I understand, would not apply to a man who may have fought a duel elsewhere, while a citizen of another State, and who subsequently came here and became a citizen of Nevada, whilst the form of oath, as prescribed in Section 2, applies to all who may have been concerned in a duel, at any place, subsequent to the adoption of this Constitution, and would operate to prevent them from entering upon the duties of any office to which they may have been elected.

Mr. FRIZELL. I would like to know in what quarter the moon is? That inquiry is not made, however, in order to imply lunacy on the part of any person living, but it applies to myself. I have always been a little superstitious at times, having occasionally indulged the fancy that I was "out of luck"; and I think this must be one of my bad days, because I believe I have not voted for a thing to-day that has been carried. Now I think from the remarks that have been made—

The PRESIDENT. Does the gentleman rise to a privileged question?

Mr. DELONG. He is speaking about the moon; that must be in order. [Merriment.]

Mr. FRIZELL. My remarks will apply to this amendment. I say, judging from the speeches that have been made, from all the sentiments that have been expressed here by members, I think, sir, that I am "gone up" again. [Laughter.] Sir, what has heretofore been commendable, as far back as we can read in history, sacred and profane, in the days of Moses, and in the days of the greatest glory of ancient Greece—what has been regarded as commendable in men, in all ages, and among all nations—it is proposed that we shall place our seal of condemnation upon.

For my own part, I profess no particular bravery, but I do say that gentlemen are attempting, by this proposition, to reach something that cannot be reached. The men who do these things against which gentlemen are aiming to legislate, are generally men of education, men of the finest and nicest sense of honor, and of right and wrong; and when such a man has been insulted until he can bear it no longer, and makes up his mind to do this thing, to fight a duel, to take the chances of life and death—for a duel is necessarily a life and death struggle—when a man, goaded by insults and wrongs, makes up his mind to do that, contrary to the teachings of Christianity, contrary to the lessons inculcated upon his infant mind by his mother, contrary, I am willing to admit, to the spirit of modern civilization, do you suppose that any laws we can pass, or any provisions that we can embody in this Constitution, will stop him? I think not. I am quite sure it would not if it were my own case. If I should be so unfortunate as to be compelled to fight a duel, and I could not vote in this State thereafter—I would not mind the other deprivation, but the right of suffrage, the birthright of an American freeman, I should regret to lose—in that case I should have to leave the State, and then I should be out of luck again. [Laughter.]

This is a matter, however, for the good sense of members, and the judgment of the Convention, and whatever way it shall be decided by the vote of the Convention, I shall try to be satisfied. Nevertheless I think I am out of luck. [Merriment.]

Mr. DUNNE. I am in favor of this amendment, but as to the original section, or the section providing for this oath, I desire to say, although it may not be strictly in order while the amendment is pending, that I think it is a most unjust provision. I am opposed to the incorporation of such an oath in our Constitution, because I think it places a power in the hands of irresponsible men—

Mr. COLLINS. I call the gentleman to order. He is discussing the preceding section, while the only question is upon the amendment of the gentleman from Humboldt (Mr. Banks) to Section 3.

Mr. DUNNE. Did not the gentleman from Storey himself, when he spoke on this question, address his remarks to the general subject of dueling?

Mr. COLLINS. I addressed myself to the substitute.

Mr. DUNNE. But did not the gentleman refer to the subject of dueling generally, in his remarks?

Mr. COLLINS. I confined myself entirely to the substitute, sir.

The PRESIDENT. The gentleman from Humboldt will endeavor to confine his remarks to the question.

Mr. DUNNE. I say, sir, that it puts the whole life of a man—his political rights, and his standing among his fellow-citizens—into the hands of any irresponsible man whose services may be bought for that purpose. Does anybody suppose that when a man is willing to risk his life in a duel, he is going to stand back for the reason that he also risks an office which perhaps he never would get, anyhow? That is an absurd supposition. And the effect would be to place all the advantage in the hands of irresponsible men, giving those who are law-abiding, and who may be supposed to stand in some fear of the penalties imposed, no oppor-

tunity for redress, no chance to justify themselves. If you sue an irresponsible man for libeling your character, he may refer you to a clause which we have already adopted in Article I—the Declaration of Rights—by virtue of which he may laugh at you. Those who are advocating this proposition ought to take measures to add to the clause in the Bill of Rights declaring that there shall be no imprisonment for debt, the words "except in cases of libel or slander." Then the party whose character is assailed by an irresponsible man might have some show for justice, and then such men would be careful about attempting to destroy the reputation of citizens, when they would have before them the fear of imprisonment, perhaps for life. But my great objection arises from the fact that duelists can be hired who stand ready to fight at any time, and in that manner the reputation of any man in the Territory or State may be attacked. For that reason I am opposed to the proposition.

Mr. PROCTOR. I am somewhat like my friend from Storey (Mr. Frizell) on the subject of luck, and have been during almost the whole session of the Convention, having nearly always been in the minority. I voted against the section which contains this oath disfranchising a man for fighting a duel, conveying or accepting a challenge, or any thing of that kind. As to this amendment, however, I do not understand exactly what it means; but if there is any possibility of getting the article back into the Committee of the Whole, or anywhere else where that oath, and all else on the subject can be stricken out, I hope it will be done. I think the establishment of such a provision, disfranchising a man because he has happened to take up an insult offered to himself, or possibly to some member of his family, when there is no other way of reaching and punishing the offender, would really be going backward instead of forward in the march of progress. I do not understand the purport of the amendment, and in order that I may understand it, I ask to have it read again.

The PRESIDENT. This amendment has been read several times already, but the Secretary will read it once more, and the Chair trusts that members will pay attention, in order to save time.

The SECRETARY again read the amendment proposed by Mr. Banks.

Mr. DELONG. Would not that include also one who might carry a man off the field after he had been shot in a duel, and the surgeon who should bind up his wounds? Just read that last clause carefully. It says—"or aided or assisted in any manner those thus offending." That surely cannot be the intention. ["Question! Question!"]

Mr. BROSNAN. I shall have to vote against the amendment.

The question was taken by yeas and nays on the motion to recommit Section 3, with instructions to make the amendment as modified, and the vote was—yeas, 14; nays, 11—as follows:

Yeas—Messrs. Banks, Bekins, Chapin, Collins, Creaman, Folsom, Kinkead, Lockwood, Mason, Murdock, Nourse, Parker, Warkwick, and Mr. President—14.

Nays—Messrs. Brosnan, Crawford, DeLong, Dunne, Frizell, Gibson, Hawley, Kennedy, Proctor, Tuglaibus, and Wetherill—11.

So the section was recommitted, with instructions to amend, as proposed by Mr. Banks.

The PRESIDENT appointed as the special committee to make the amendment, Messrs. Banks, Nourse, and Warwick.

Mr. HAWLEY. I would ask leave to say one or two words in explanation of my vote.

Mr. DELONG. It will come up again in a moment, on the committee's report.

Mr. DUNNE. Can I make a report at this time, by leave of the Convention?

The PRESIDENT. The regular order is the consideration of the remaining sections; the gentleman can, however, make his report by a suspension of the rules.

THE OATH.

Mr. PARKER. Can we recommit another section at this time?

The PRESIDENT. Certainly; the article has all been read.

Mr. PARKER. I move that Section 2 of this article be referred to a special committee, with instructions to amend the section by inserting after the word "enter," in the last line, the words "if an oath," in parentheses; also, by adding after the words "so help me God," in the last line, "if an affirmation, under the pains and penalties of perjury;" the words "if an affirmation" to be included in parentheses. The last clause will then read as follows:

"And further, that I will well and faithfully perform all the duties of the office of —— on which I am about to enter, (if an oath,) so help me God; (if an affirmation,) under the pains and penalties of perjury."

Mr. BROSNAN. I really cannot understand that this amendment adds any force or increased effect to the oath. I do not perceive the purpose of the amendment.

Mr. PARKER. I will explain my intention. In the first part of the oath, gentlemen will observe, the language is "I, ——, do solemnly swear (or affirm)"—the words "or affirm" being in parentheses. The object plainly is to provide for those who may from conscientious motives, prefer to affirm, rather than take an oath. But at the end, it now reads "so help me God"—and that is no affirmation, but an oath—and a "Friend" could not take or subscribe to such a declaration. It is not an affirmation if a man is compelled to say at the end, "so help me God," and the object of my amendment is to provide for an affirmation. If the Convention prefer to strike out the words "or affirm" in the beginning of the oath, I shall not object, but if we undertake to make provision for those who choose to affirm, let us do so.

Mr. BROSNAN. Those who are called

"Friends," are not the only persons who affirm.

Mr. PARKER. I am aware of that. I only mentioned a "Friend" for the sake of an illustration.

Mr. BROSNAN. I understand that this is framed in the usual way, either for an oath or affirmation; it simply requires the party to express his reliance upon Omnipotence—upon the Creator. The gentleman's amendment does not, in my judgment, read handsomely, and it gives no greater force to the section.

The question was taken on the motion to recommit Section 2, with instructions, and it was not agreed to.

DUELING—AGAIN.

Mr. BANKS, from the special committee, to which was recommitted Section 3, presented the following report:

MR. PRESIDENT—Your special committee, to which was recommitted Section 3 of Article XVI, with instructions to amend the same, beg leave to report the section back, amended according to the instructions of the Convention.

Your committee also recommend that the words "those thus offending" be stricken out of the substitute, and the words "in fighting a duel" inserted instead, so that the clause will read:

"Or who has acted as second, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel," etc.

Mr. DuLONG. That report is contrary to the instructions of the Convention.

Mr. BANKS. We report it back amended in accordance with the instructions, and we take the liberty of making that suggestion, in addition.

Mr. NOURSE. I will move that the report of the committee be amended in that way.

Mr. DuLONG. I understand that the only question is on the adoption of the original amendment, as it was referred to the special committee.

Mr. NOURSE. No, sir.

Mr. DuLONG. I ask the Chair.

Mr. BANKS. Now, sir, I have no particular objection to a factious parliamentary fight, if the gentleman from Storey desires it, and I intend to confine myself within parliamentary rules. I will therefore ask that the section, as amended and reported by the committee, be adopted, and then, to cover the gentleman's quibble, I shall move to recommit the section, with instructions to make this further amendment.

The PRESIDENT. The question is on accepting the report.

Mr. DuLONG. I insist that there is no such thing as accepting the report of the committee at this time. The committee simply makes its report, and the report goes on file. The only disposition that can now be made of the report is to place it on the general file.

The PRESIDENT. The only question now is on the acceptance of the report, and the discharge of the committee. The committee was appointed for a special purpose, and if the committee has not discharged its duty, the gentleman can vote against the acceptance of the report.

Mr. DuLONG. Is it to be accepted before it goes on the general file?

The PRESIDENT. Undoubtedly so. The only question which can be considered is the acceptance of the report.

Mr. DuLONG. I make this point of order, that under the rules when a matter is reported from a committee it goes on the general file, and then it comes up in the regular order of business, without any motion. The acceptance of the report is when it is handed in, and then it goes to the general file under the rules; when it comes up again in its order, the question is not on accepting the report, but on its adoption. I do not now raise an objection to the acceptance of the report.

After some discussion in regard to the exact condition of the report, and the question pending,

The PRESIDENT overruled the point of order, and decided that the report could not go on the general file, but must now be considered and acted upon, because of the subject matter of the report being a component part of the article under consideration, and now on its final passage.

Mr. DuLONG appealed from the decision of the Chair.

After a brief discussion,

The question was taken—"Shall the decision of the Chair stand as the judgment of the Convention?"—and was decided in the affirmative. So the decision was sustained.

Mr. BANKS. Now, in order to cover this difficulty, which I consider purely technical, and to avoid any further points of order, I move that Section 3 be referred to a special committee of one, to consist of the gentleman from Storey, (Mr. Collins,) with instructions to further amend the section by striking out the words "those thus offending," and inserting instead the words "in fighting a duel;" and that he be instructed to report immediately.

The question was taken, and the motion was agreed to.

Mr. COLLINS reported back the section amended, according to instructions, so as to read as follows:

SEC. 3. No person shall be eligible to any office who is not a qualified elector under this Constitution. No person who, while a citizen of this State, has, since the adoption of this Constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this State, or who has acted as second, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to hold any office of honor, profit, or trust, or enjoy the right of suffrage under this Constitution. The Legislature shall provide by law for giving force and effect to this section.

No objection being made, the report was received and the committee discharged.

The PRESIDENT. The question is on the final passage of the article, as amended.

THE OATH—AGAIN.

Mr. PARKER. I move to recommit Section 2, of this article, with instructions to amend, by striking out, in the first line of the oath, the word "or" and the parentheses, and inserting, instead of "or," the word "and."

Mr. DELONG. Then they would solemnly swear *and* affirm. [Merriment.]

Mr. PARKER. The gentleman from Storey is amused, but he is not a clergyman, if he is a lawyer. Now, sir, we have that language in other State Constitutions, as, for example, in the State of Massachusetts, where the form prescribed is, "I, A B, do solemnly swear, and affirm," the latter words being an averment following, and in addition to "I do solemnly swear." I had proposed to leave this portion of the oath unchanged, and amend the concluding portion so as to read, "(if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury." The Convention has refused, however, to make that change, and I now offer this amendment, so that the first part of the oath may harmonize with the latter part.

Mr. DELONG. The idea, I understand, is, that if a man desires to make an affirmation, we shall require him, by this amendment, to swear, and affirm, both.

Mr. PARKER. I only want it to harmonize, the Convention having refused to amend the latter portion so as to permit an affirmation.

The question was taken on Mr. Parker's motion, and it was not agreed to.

DUELING—AGAIN.

Mr. DUNNE. I desire to call attention to what appears to me a discrepancy between the section just adopted and this form of oath. Under Section 3, a man may be elected to office who has fought a duel while a resident of another State; but if he is elected, before entering upon the duties of his office, he is obliged to swear he has not fought a duel "since the adoption of the Constitution of the State of Nevada."

The PRESIDENT. The Chair suggested this apparent contradiction sometime since.

Mr. BANKS. I can see no inconsistency. If the oath does go further than the provision in Section 3, it seems to me it can do no harm. At all events, no person will be likely to take office, or hold office, if he has fought a duel.

Mr. FRIZELL. I think it is exactly right, as it is, in that respect. I do not wish to give a non-resident any advantage over me. If men go to fighting duels in other States, and then come here, I do not want to allow them to hold office, while I, living here, may be disqualified for the same cause.

Mr. DUNNE. I will make a motion that Section 2 be referred to a select committee of three, to consist of Messrs. Banks, Nourse, and Warwick, with instructions to amend the section so as to make it conform to the language in Section 3.

The PRESIDENT. The gentleman's instructions are too indefinite; he will please to reduce the instructions he proposes to writing.

Mr. DUNNE. I will do so. I move to recommit Section 2, with instructions to amend by inserting, between the words "not" and "fought a duel," the words, "while a resident of the State of Nevada." Then it will read:

"And I do further solemnly swear (or affirm) that I have not, while a resident of the State of Nevada, fought a duel, nor sent or accepted a challenge," etc.

[Mr. WARWICK in the chair.]

Mr. JOHNSON. I hope that amendment will not be adopted. The difficulty is not in Section 2, but in Section 3; and in my judgment the former is right, whilst the latter is wrong. Section 3, as amended, makes an obvious, and, as I regard it, an unjust discrimination between those who may have been engaged in duels without the State, and those who may have offended in that manner within the State. The oath in Section 2 would have the effect of precluding every man from holding office who shall have been concerned in a duel, here or elsewhere, subsequent to the adoption of the Constitution; whilst Section 3, as amended by the gentleman from Humboldt, (Mr. Banks,) prohibits any person from either voting or holding office who "while a citizen of this State," and subsequent to the adoption of the Constitution, shall have taken part in a duel, either within or beyond the boundaries of the State.

The only inharmony I can discover between the two sections, is that occasioned by the incorporation, in the amendment of the gentleman from Humboldt, of the words "while a citizen of this State." Here is the only trouble, and for my part I do not think it is just or proper to place an inhibition upon those of our own citizens who may have offended in this particular, when we virtually invite duelists from abroad to come here and enjoy the privileges denied to our own citizens. If we strike out of Section 3 the words "while a citizen of this State," it will be entirely in consonance with the oath prescribed in Section 2.

But the amendment now proposed would make the same unfair discrimination in Section 2. That is to say, it proposes to take a step backward. I prefer to retain the present form of language in Section 2, so that if duelists from other States are not disfranchised by the direct provisions of Section 3, they will at least be excluded from holding office by the requirements of the oath of office. I do not propose to take any backward step. I desire, as does the gentleman from Storey, (Mr. Frizell,) that those who come from without the State, if they have been duelists, shall be subject to the same disabilities as our own citizens, because I do not see the justice of permitting men who have fought duels in California or other States, subsequent to the date of the adoption of our Constitution to remove here and exercise rights and enjoy privileges which are denied to citizens of Nevada who may have done the

same thing. I would much rather take the chances, under the section as it stands, of excluding those men from office by means of the form of the oath, than to amend it as now proposed by the gentleman from Humboldt, (Mr. Dunne,) and thus make a direct discrimination against our own citizens.

Mr. NOURSE. I do not know that I have any objection to the oath as it is, for I do not care if it does go a little beyond the provisions contained in the other section; but I do not quite agree with the gentleman from Ormsby, (Mr. Johnson,) as to where the trouble is, if there be any. I suppose the reason why these words were inserted in Section 3, is that a person fighting a duel in this State, necessarily does so knowing what are the provisions of the Constitution, and that he is doing something in direct violation of those provisions, and for that reason he may properly be excluded; while if a person fights a duel elsewhere, it is a matter over which this State has no control, and to say that when a man comes here he shall not be allowed to vote or to hold office if he has fought a duel in some other country, where perchance there may possibly have been at the time no law against dueling, and the practice may have been considered perfectly allowable, it seems to me would be rather of the nature of passing an *ex post facto* law. We mean this inhibition to apply only to those who have fought duels in opposition to or in violation of the provisions of our Constitution, and living in another State they could not be expected to know what those provisions were. Further than that, I am not, for my part, prepared to go.

Mr. JOHNSON. I do not favor any *ex post facto* provision, but I do propose that when we adopt a State Constitution, and become ourselves bound by its provisions, it shall be applicable also to those who may hereafter come to live amongst us; not that it shall apply to those who are out of the State, whilst they remain out, but when they shall remove here they are, and properly should be, subject to all the provisions of our Constitution. I do not propose to make any distinction between the duelists of other States and those of Nevada. If it be wrong or objectionable to apply the rule to one class, it is equally wrong and objectionable to apply it to another; and if it be in conflict with the public sentiment of this State to permit the duelist to hold office, it makes no difference whatever whether he has violated the theory of our law or Constitution on that subject, here or elsewhere.

Mr. BANKS. Section 3 was introduced with a full knowledge of what it contained, and I think it was voted for with a like full and complete understanding on the part of the Convention. Now what is proposed by these provisions in both sections? In the first place, nobody can hold office, because nobody can take the oath of office if he has fought a duel anywhere, since the adoption of the Constitution. Then, in Section 3 it is provided, I think clearly, that any person who has fought a duel, being a citizen of this State, shall be deprived not only of the right to hold office, but of the right to vote. The oath absolutely prohibits from holding office any person who has fought a duel anywhere since the adoption of the Constitution; and Section 3, going a little further, prescribes a penalty, so far as persons fighting a duel while living in Nevada are concerned. They are prohibited from either voting or holding office. I will say, however, that if gentlemen desire to amend Section 3, so as to apply to those who shall have been concerned in duels before they became citizens, I am willing to go even as far as that, but I shall certainly vote against this amendment proposed by my colleague.

Mr. DELONG. I am surprised at the degree of conscientious regard manifested by the gentleman from Washoe (Mr. Nourse) for the amendment made by the gentleman from Humboldt (Mr. Banks.) He votes for the oath in Section 2 with great pleasure, and yet that is already subject to the same objection which he thinks might be made to Section 3, if amended according to the suggestion of the gentleman from Ormsby (Mr. Johnson.) While it is not strictly an *ex post facto* law, yet it is something very much like the edicts of that Roman Emperor, who caused the laws to be written in small characters, and posted upon high columns, so that nobody could read them. It punishes a man for having done an act, without any intention in the world to disobey our laws. If a man has fought a duel in some other country, where no such penalty attaches, when he comes here he finds that his having done that not only disqualifies him for holding any official position, but also deprives him of the right of suffrage.

Now I think I am about in the condition of my friend and colleague (Mr. Frisell) in regard to bad luck. The moon is about in its last quarter, and I suppose "that 's what 's the matter." [Merriment.] At any rate, there must be something wrong. Nevertheless, I insist, if men must be disfranchised and debarred from holding office for the offense of fighting a duel, they should at least have the right to know what the laws are, before they are considered as having offended against them; and therefore I ask that the penalty shall not be made to apply to those who may have fought duels before they came to this State—in some country, perhaps, where it is not looked upon at all as a crime. I think that is carrying the provision a little too far.

Mr. COLLINS. It would be difficult to find a man who has come here from any State in the Union, who does not know that it is against the law to fight a duel. There are laws against dueling, I believe, in every one of the United States, and in European countries, also.

Mr. DELONG. I think you will find a great many who have come here ignorant of the law to a certain extent, if not altogether.

Mr. JOHNSON. We do not desire men of that class to hold office.

Mr. DELONG. A great many of them do.

The question was taken on the motion of Mr. Dunne, to recommit Section 2 with instructions, and upon a division the vote was—ayes, 10; noes, 11. So the motion was not agreed to.

The question was taken by yeas and nays on the final passage of the article, as read, and subsequently amended, and the vote was—yeas, 16; nays, 8—as follows:

Yeas—Messrs. Banks, Belden, Chapin, Collins, Creaman, DeLong, Folsom, Hawley, Kinkead, Lockwood, Mason, Murdock, Nourse, Warwick, Wetherill, and Mr. President—16.

Nays—Messrs. Brosnan, Crawford, Dunne, Frisell, Gibson, Kennedy, Proctor, and Taglialno—8.

So the article was passed.

During the voting—

Mr. JOHNSON. I will state this, by the way of briefly explaining my vote, in order that it may appear consistent on the record. I regret that we should have an apparent contradiction in our Constitution, for its harmony is marred thereby. I think that Section 3 should go further than it does, and I protest against what seems to me to be an unjust discrimination between those who may have been parties to duels outside of the State, and those who may have offended in the same way within the State, after the adoption of the Constitution. Nevertheless, being in favor of the general principle of prohibiting, as far as possible, the practice of dueling, I vote aye.

Mr. HAWLEY. I have voted "no," simply because the difficulty which was suggested by the gentleman from Storey, (Mr. DeLong,) had also suggested itself to my own mind. But because I am opposed to dueling, and believing that a fair, although a very strict construction of the instrument will not subject to the prescribed penalties the surgeon who performs the duties of humanity for a man wounded in a duel, or the friend who bears a wounded man from the field, I shall change my vote to "aye."

Mr. DELONG. I change my vote from "no" to "aye," with a view to moving a reconsideration.

The result of the vote having been announced, as above stated—

Mr. DELONG. I give notice, that on our next day of session, I will move to reconsider the vote by which this article was passed.

The PRESIDENT. The Secretary will make a note of the gentleman's notice, and the article as passed, will be referred to the Committee on Phraseology.

THE SCHEDULE.

Mr. DUNNE, from the Committee on Schedule, submitted the following additional report:

MR. PRESIDENT—Your Committee on Schedule respectfully report the following additional sections as the balance of the article entitled Schedule:

SEC. 7. The term of State officers, except judicial, elected at the first election under this Constitution, shall continue until the Tuesday after the first Monday in January, A. D. 1867, and until the election and qualification of their successors.

SEC. 8. The Senators to be elected at the first election under this Constitution shall draw lots, so that the term of one-half thereof, as near as may be, shall expire on the day succeeding the general election in A. D. 1866, and the term of the other half shall expire on the day succeeding the general election in A. D. 1868; *provided*, that in drawing lots for all Senatorial terms, the Senatorial representation shall be allotted so that in the counties having two or more Senators the terms thereof shall be divided, as near as may be, between the long and short terms.

SEC. 9. At the general election in A. D. 1866, and thereafter, the term of Senators shall be for four years from the day succeeding such general election, and members of Assembly for two years from the day succeeding such general election, and the terms of Senators shall be allotted by the Legislature in long and short terms, as hereinbefore provided, so that one-half thereof, as nearly as may be, shall be elected every two years.

SEC. 10. The term of members of the Assembly elected at the first election under this Constitution, shall expire on the day succeeding the general election in A. D. 1865, and the terms of those elected at the general election A. D. 1865, shall expire on the day succeeding the general election A. D. 1866.

SEC. 11. The first regular session of the Legislature shall commence on the second Monday of December, A. D. 1864, and the second regular session of the same shall commence on the first Monday of January, A. D. 1866, and the third regular session of the Legislature shall be the first of the biennial sessions, and shall commence on the first Monday of January, A. D. 1867, and the regular sessions of the Legislature shall be held thereafter biennially.

SEC. 12. All county officers, under the laws of the Territory of Nevada at the time when this Constitution shall take effect, (except Probate Judges,) whose offices are not inconsistent with the provisions of this Constitution, shall continue in office until the first Monday of January, A. D. 1867, and until their successors shall be elected and qualified. And all township officers shall continue in office until the expiration of their terms of office, and until their successors are elected and qualified.

SEC. 13. At the first regular session of the Legislature, to convene under the requirements of this Constitution, provision shall be made by law for the payment of the publication of six hundred copies of the proceedings of this Convention, in book form, to be disposed of as the Legislature may direct; and the Hon. J. Neely Johnson, President of this Convention, shall contract for, and A. J. Marsh, official reporter of this Convention, under the direction of the President, shall supervise the publication of such proceedings. Provision shall be made by law, at such first session of the Legislature, for the compensation of the Official Reporter of this Convention, and he shall be paid in coin, or its equivalent. He shall receive for his services, in reporting the debates and proceedings, fifteen dollars per day during the session of the Convention, and seven and one-half dollars additional for each evening session, and thirty cents per folio of one hundred words for preparing the same for publication; and for supervising and indexing such publication, the sum of fifteen dollars per day during the time actually engaged in such service.

SEC. 14. The Governor, Secretary, Treasurer, and Superintendent of Public Instruction of the Territory of Nevada, shall each continue to discharge the duties of their respective offices after the admission of this State into the Union, and until the time designated for the qualification of the above named officers to be elected under the State Government; and the Territorial Auditor shall continue to discharge the duties of his said office until the time appointed for the qualification of the State Controller; *provided*, that said officers shall each receive the salaries and be subject to the restrictions and conditions as provided in this Constitution; *and provided further*, that none of them shall receive to his own use any fees or perquisites for the performance of any duty connected with his office.

SEC. 15. The Governor, Lieutenant-Governor, Secretary of State, State Treasurer, State Controller, Attorney-General, Surveyor-General, Clerk of the Supreme Court, and Superintendent of Public Instruction, to be elected at the first election under this Constitution, shall each be qualified and enter upon the duties of their respective offices on the first Monday of December succeeding their election, and shall continue in office until the first Tuesday after the first Monday of January, 1867, and until the election and qualification of their successors respectively.

SEC. 16. The Judges of the Supreme Court, District Judges, and County Judges, provided to be elected at the first election under this Constitution, shall be qualified and enter upon the duties of their respective offices on the first Monday of December succeeding their election.

SEC. 17. The terms of the Supreme Court shall be held at the seat of government of the State, and the terms of the District Courts and County Courts respectively, shall be held at the county seats of such counties respectively; and until provision shall be made by law, the terms of the Supreme Court shall be held at such times as a majority of the judges of said court may appoint. The first term of the District Court in each county, and the County Court in Storey County, shall commence on the first Monday of December, 1864. The Legislature shall provide by law for the time of holding the terms of the Supreme, District, and County Courts.

All of which is respectfully submitted.

DUNNE, Chairman pro tem.

The report was accepted, and the sections reported were referred to the Committee of the Whole.

Mr. KENNEDY. I move that the Convention now resolve itself into Committee of the Whole, for the consideration of the remainder of the Schedule.

JUDICIAL DEPARTMENT.

The PRESIDENT. I think it would be better to vary the motion somewhat, so as to go into Committee of the Whole on the article on Judicial Department. It is important to place that article in the hands of the Enrolling Committee as early as possible.

Mr. KENNEDY. Very well; if that is the desire of the Convention, I will move that we go into Committee of the Whole on Article VI, entitled Judicial Department.

Mr. BROSNAN. I will suggest that, unless we can get through with both of these articles this evening, it would perhaps be better, and certainly it would give more satisfaction to the Storey County delegation, to defer the article on the Judicial Department until Monday. Some of the members from that county who are not here now will probably be down on Monday, and they would like to participate in the consideration of that article.

Mr. DELONG. They ought to have remained here to-day, at least.

Mr. KENNEDY. If we get through with this article to-day, we may be able to finish up on Monday; but if we keep it back till Monday, we shall not get through our business before Tuesday or Wednesday.

Mr. BROSNAN. I will not make any motion.

The question was taken on Mr. Kennedy's motion, as modified, and upon a division the vote was—ayes, 15; noes, 14. So the motion was agreed to.

COMMITTEE OF THE WHOLE — JUDICIAL DEPARTMENT.

The Convention accordingly resolved itself into Committee of the Whole, (the PRESIDENT remaining in the chair,) and resumed consideration of Article VI, entitled Judicial Department.

STOREY COUNTY COURT.

The pending question was stated to be on the motion of Mr. Dunne, to strike out Section 9, which establishes the jurisdiction of the county court in Storey County.

Mr. BANKS. Are general amendments in order at this time?

The PRESIDENT. No, sir; the reading of the article by sections has not been completed.

Mr. NOURSE. I wish to say, if I may be allowed, that I propose to offer an amendment which I think is calculated to meet the objections that have been urged against this article, as it will stand after striking out so much as relates to county courts, including Section 9.

The question was taken on the amendment to strike out Section 9, and it was agreed to.

PLACES OF HOLDING COURTS.

The Secretary read Section 10, as follows:

SEC. 10. The times and places of holding the terms of the Supreme Court, the general and special terms of the District Courts within the several districts, and of County Courts, shall be provided by law.

[Mr. CROSMAN in the chair.]

Mr. NOURSE. The words "County Courts" will need to be stricken out.

Mr. JOHNSON. I will offer a substitute for Section 10, providing that the District Courts shall be held at the county seats of the respective counties, and that the terms of the Supreme Court shall be held at the capital of the State. I do not see any more appropriate place than this for such a provision, and I think it is one of considerable importance. We ought not to leave it in the power of the Legislature to provide by law that the terms of the District Court in any county shall be held perhaps in some remote part of the county. If it is proper that the State officers should be required to reside at the capital, and that the county officers should keep their offices at the seat of government of their respective counties, it is certainly proper that the terms of the Supreme Court should be held at the capital, and the terms of the District Courts at the several county seats. I am informed that a section has been prepared and reported by the Committee on Schedule, intended to cover this same matter, but I think this is probably a better place for it, and that portion of the Schedule not having been acted upon, it will be at a future time within the control of the Convention. I will prepare my amendment in a moment, and I hope we shall incorporate it here.

Mr. BROSNAN. The section now stands precisely as it was in the old Constitution, with the exception of omitting the Probate or County Courts; and I believe my friend from Ormsby (Mr. Johnson) had the honor of framing that section.

Mr. JOHNSON. That does not necessarily prove that it was right. [Merriment.]

Mr. DeLONG. Does it prove the contrary?

Mr. JOHNSON. I will not undertake to say. I think, however, that both the gentlemen from Storey concur with me in the opinion that there are some features of the old Constitution which are not exactly right, while in regard to others we differ. The question now is, whether it is better that the terms of the District Court in each county shall be held at the county seat, or at some other place. I move to amend by striking out Section 10, as printed, and inserting the following in its stead:

Sec. 10. The times of holding the Supreme and District Courts shall be as fixed by law. The terms of the Supreme Court shall be held at the seat of Government, and the terms of the District Courts shall be held at the county seats of their respective counties.

Mr. BROSNAN. I should like to have that section retained as it was in the original Constitution, or as it was reported by the committee. I would prefer, for my part, that the place of holding the Supreme Court should not be fixed permanently in the Constitution. It seems to me that exigencies may arise when it would be proper to give the Supreme Court authority to meet at some other place than the one fixed by the Constitution.

Mr. BANKS. In what cases?

Mr. BROSNAN. Many cases might arise. They should themselves be the judges of the occasion.

Mr. JOHNSON. If any valid reasons can be shown why the terms of the Supreme Court should not be held at the Capital, and the several District Courts at the seat of government of each county respectively, I hope they will be stated. Possibly the gentleman from Storey (Mr. Brosnan) may be able to assign some more substantial reason for voting against this amendment, than the fact that the original section was copied from the Constitution of last year.

Now, sir, I do not think we ought to permit our courts to go traveling and strolling around the country, any more than we should a Legislature, and I think there are special reasons why the Supreme Court should remain at the capital, and the District Courts should be held in each county, at its seat of government. If you allow the courts to go strolling around the country, the clerks with their voluminous records must follow in their wake, or accompany them, and the expense which that would involve would in many instances be very great. In my judgment this is a matter which should be fixed in the Constitution, and not left subject to the mutations and changes incident to legislative action.

Mr. FRIZELL. I hope the amendment offered by the gentleman from Ormsby (Mr. Johnson) will be voted down. It is generally conceded by the representatives from Storey County, that at the end of about two years it will probably be necessary to have two or three District Courts in that county, and if that shall become necessary, Gold Hill certainly ought to have one of them, notwithstanding that Virginia City is the county seat. Therefore I trust that this amendment will be voted down, and then there will be one thing, at least, going in my favor to-day.

The question was taken on the amendment proposed by Mr. Johnson, and, upon a division, the vote was—ayes, 12; noes, 5. So the amendment was agreed to.

Mr. WARWICK. I call attention to the fact that this amendment was carried by a vote of less than a quorum.

Mr. DeLONG. That is no matter; we are now in Committee of the Whole, and it will have to be acted on by the Convention.

JUSTICES' COURTS.

[The PRESIDENT in the chair.]

The Secretary read Section 11, as follows:

Sec. 11. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and shall fix by law their powers, duties, and responsibilities. It shall determine the manner and the cases in which appeals may be taken from Justices' and other Courts; provided, such powers shall not in any case conflict with the jurisdiction of the several Courts of Record; and further, that such Justices' Courts shall have no jurisdiction in the trial of cases wherein the title to real estate or mining claims, or the right of possession, is or may be involved. The Supreme Court, the District Courts, the County Courts, and such other courts as the Legislature shall designate, shall be Courts of Record.

Mr. NOURSE. It is necessary to strike out "the County Courts."

The CHAIRMAN. The Secretary will make that amendment, to conform to the previous action of the committee.

Mr. BANKS. I would like to hear the latter part of the proviso read again, commencing with "and further."

The SECRETARY again read the proviso.

Mr. NOURSE. Now that the County Courts are stricken out, possibly it would be better to define the jurisdiction of Justices of the Peace, so as to come up to the jurisdiction of the District Courts.

Mr. DeLONG. It does already.

Mr. NOURSE. I think not, in the amount of their jurisdiction.

Mr. WARWICK. Yes, sir; the limit fixed is three hundred dollars.

Mr. HAWLEY. Has the Committee of the Whole directed that the references to County Courts be stricken out wherever they occur throughout the article?

The CHAIRMAN. That is the understanding of the Chair.

Mr. NOURSE. I will not offer an amendment now, but if the committee will pass over the section, I will endeavor to draw up one.

The CHAIRMAN. If there be no amendments, we will proceed with the reading until the article is finished, and then general amendments will be in order. It is not necessary to take a vote on the adoption of each section as it is read.

No further amendment being offered—

MUNICIPAL COURTS.

Section 12 was read, as follows:

SEC. 12. The Legislature shall prescribe the powers, duties, and responsibilities of any Municipal Court that may be established in pursuance of Section 1 of this article; and shall so fix by law the jurisdiction of said court as not to conflict with that of the several Courts of Record.

No amendment was offered.

FEES AND PERQUISITES.

Section 13 was read, as follows:

SEC. 13. No judicial officer, except a Justice of the Peace, shall receive to his own use any fees or perquisites of office.

No amendment was offered.

INELIGIBILITY OF JUDGES.

Section 14 was read, as follows:

SEC. 14. The Justices of the Supreme Court, and the District Judges, shall be ineligible to any office other than a judicial office during the term for which they shall have been elected, and all elections or appointments of any such judges by the people, Legislature, or otherwise, during said period, to any office other than judicial, shall be void.

No amendment was offered.

CHARGES TO JURIES.

Section 15 was read, as follows:

SEC. 15. Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law.

No amendment was offered.

STYLE OF PROCESS.

Section 16 was read, as follows:

SEC. 16. The style of all process shall be—"The State of Nevada," and all prosecutions shall be conducted in the name and by the authority of the same.

No amendment was offered.

EQUITY ADMINISTRATION.

Section 17 was read, as follows:

SEC. 17. There shall be but one form of civil action, and law and equity may be administered in the same action, in Courts of Record.

Mr. BANKS. What is the object of those words "in Courts of Record?" They are not contained in the old Constitution.

Mr. BROSNAN. I move to strike out those words. They were not in the original section, but for some reason they were added in committee.

Mr. KENNEDY. I would like to have those words left in, to keep certain blockheads, who are Justices of the Peace, from undertaking to administer equity. They do try it sometimes, down in Lyon County.

The question was taken on the amendment offered by Mr. Brosnan, and on a division the vote was—ayes, 8; noes, 4.

The CHAIRMAN. I think that is rather too light a vote.

Mr. DELONG. The idea of incorporating these words, it strikes me, is this: We have expressly declared already that the District Courts shall have original jurisdiction in all cases in equity, and in all cases at law where the amount involved exceeds the sum of three hundred dollars; and now this section provides that law and equity may be administered in the same action, but only in Courts of Record. The object simply is to prohibit any attempt at administering equity by Justices of the Peace.

The CHAIRMAN. It seems to me very proper.

Mr. BANKS. This is merely the report of the Judiciary Committee. They conceived that those words were necessary to be incorporated, and they have added to the original section these words—"in Courts of Record." Now I do not pretend, as was intimated this morning, to be a lawyer, but I know that equity and law are not so clearly defined as to admit of the use of such words as are contained in this section.

The question was again taken on the amendment to strike out the words "in Courts of Record," and upon a division the vote was—ayes, 5; noes, 11. So the amendment was not agreed to.

Mr. DELONG. I move that the gentleman from Humboldt (Mr. Banks) be added to the Judiciary Committee.

Mr. BANKS. I second the motion.

Mr. DELONG. I withdraw it.

Mr. BANKS. I withdraw the second. [Merriment.]

No further amendment being offered—

SALARIES OF JUDGES.

Section 18 was read, as follows:

SEC. 18. The Justices of the Supreme Court, District Judges and County Judges, in counties wherein such officers shall have been elected, as provided for in this Constitution, shall each receive quarterly, for their services, a compensation to be fixed by the Legislature, and which shall not be increased or diminished during the term for which they shall have been elected. And the Legislature shall provide for setting apart from each year's revenue a sufficient amount of money to pay such compensation; *provided*, that District Judges and County Judges shall be paid out of the county treasuries of their respective districts and counties.

Mr. NOURSE. I move to amend by striking out of the section all relating to County Judges, so that it will read:

"SEC. 18. The Justices of the Supreme Court, and District Judges, shall each receive quarterly, for their services, a compensation," etc.

The amendment was agreed to by unanimous consent.

Mr. NOURSE. It seems to me that there was some provision adopted elsewhere in the Constitution, in regard to salaries. I may be

at fault in regard to that. This section, however, seems to contemplate that the compensation shall be fixed by the Legislature. If so, I think there is a conflict.

The CHAIRMAN. The previous action of the Convention has only been to fix the salaries of the first incumbents. No provision has been made further than that.

Mr. KENNEDY. I suggest that we strike out, at the end of the section, the words "and counties."

Mr. NOURSE. I think it would be better to amend the last clause, so as to read "out of the county treasuries of the counties comprising their respective districts." I will make that motion. Then the proviso will read:

"*Provided*, That District Judges shall be paid out of the county treasuries of the counties composing their respective districts."

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted

SPECIAL COURT FEES.

Section 19 was read, as follows:

SEC. 19. The Legislature, at its first session, shall prescribe that upon the institution of each action, and other proceeding, and also upon the perfecting of an appeal in any action or proceeding, in the several Courts of Record in this State, a special court fee or tax, to be fixed by law, shall be advanced to the clerks of said courts respectively, by the party or parties bringing such action or proceeding, or taking such appeal; and the money so paid in shall be accounted for by such clerks, and applied towards the payment of the compensation of the judges of said courts, as shall be directed by law.

Mr. BANKS. I move to strike out the words "at its first session," in the first line. It seems to me those words would imply that after the first session the Legislature could not pass a law of this character, or do anything in regard to it. I see no necessity for using such words. If it reads "the Legislature shall prescribe," and so on, it is all that is necessary.

Mr. BROSNAN. The object was, if I understand the idea of the committee, to require the Legislature to do this at the first session; not to inhibit the Legislature from passing such a law afterwards.

Mr. LOCKWOOD. I propose to strike out "shall," and insert "may." Then, if we find that the plan does not work well, or if the State shall become so prosperous that it is no longer necessary, the tax may be dispensed with.

Mr. BANKS. Is it the opinion of the Committee on the Judiciary that this language would not, by implication, prevent legislation on the subject, after the first session?

Mr. BROSNAN. I understand it to be so.

Mr. DELONG. I guess no question was raised on the subject in the committee. I should be a little inclined to the opinion that in whatever manner it might be fixed at the first session it would have to remain—that it could not afterwards be changed.

Mr. NOURSE. Could not a subsequent Legislature repeal the law?

Mr. DELONG. Yes, sir; but it would not be authorized under the Constitution to pass another statute on the subject. Any law could be repealed, but here it says the Legislature shall at its first session pass an act providing for a certain tax. What is the inference? Why, the passage of that act exhausts the whole power conferred on the Legislature. That is my construction.

Mr. NOURSE. That would be so, if the Legislature depended upon this wording as a grant of power; but I take it the true doctrine is that the Legislature has power over all proper subjects of legislation, and the power here given to pass such a law at its first session, is merely designed to compel such legislation, and it does not have the effect to prevent a subsequent repeal or modification of the law. I think nobody will deny that without a provision like this, the Legislature might establish a docket fee by law. Now the gentleman from Storey (Mr. DeLong) admits that it does not prevent a repeal, at the second session, and if that is the case there is nothing to prevent the Legislature from reënacting it at the third session.

Mr. BROSNAN. I cannot assent to the views stated by my colleague (Mr. DeLong.)

Mr. DELONG. I will qualify my position a little, if you will allow me. I will say that it does not operate as a mandatory provision, after the first session.

Mr. NOURSE. That is so.

Mr. BROSNAN. Then we shall have no disagreement on the subject. Now, as has been said before, the Legislature of a State has absolute power in regard to the regulation of its policy, by the enactment of laws. Its power is absolute in all cases except one. The language of the law writers is that the Legislature is omnipotent. It has power to pass all laws, unless in a case where it is inhibited by express written Constitutions, except that if the Legislature pass a law against natural justice it is not held to be valid. Now I say that the intent and meaning of this language under consideration, as I understand it, and as I did understand it when it was before the Judiciary Committee, is this: conceiving and holding as I do that the Legislature has power to make these regulations always coëxtensive with its existence, the words "at its first session" were inserted *ex industria*—out of abundance of caution—for the sake of compelling the Legislature to do it at the first session. That is the way I understand it, and whether those words were in or out, the Legislature would still have that power.

Mr. DUNNE. It is now but three minutes before five o'clock, and in order that we may be able to finish this article now, I move that the Committee rise, report progress, and ask leave to sit again. I make the motion for the purpose of extending the time for taking a recess.

The question was taken, and the motion was agreed to; and the committee accordingly rose.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration Article VI, entitled Judicial Department, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

Mr. DUNNE (at two minutes before five o'clock) moved that the time for taking the recess be extended until half-past five o'clock.

The question was taken, and the motion was agreed to.

Mr. DUNNE. I move that the Convention resolve itself into Committee of the Whole for the further consideration of Article VI.

The question was taken, and the motion was agreed to.

Mr. DELONG. I rise to a point of order, that the time for recess has arrived.

The PRESIDENT. It is not well taken.

COMMITTEE OF THE WHOLE — JUDICIAL DEPARTMENT.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. DUNNE in the chair,) and resumed consideration of Article VI, entitled Judicial Department.

SPECIAL COURT FEES—AGAIN.

Section 19 was again read.

Mr. DELONG. I do not know but it is essential to amend this section by incorporating a provision directing the manner in which the money paid in shall be accounted for.

The CHAIRMAN. The question now is upon the amendment offered by the gentleman from Humboldt, (Mr. Banks,) to strike out the words "at its first session."

Mr. DELONG. Then I suppose it is in order to move a further amendment. It is proper, of course, that the money to be paid in to the District Courts, shall be applied to the payment of the salaries of the District Judges; and the money paid in to the Supreme Court clerk ought to go into the State treasury, and be set apart for the salaries of the Supreme Court judges; and the clerks should be required to account for the moneys they receive. There ought to be some provision as to when they should pay it, and to whom.

The CHAIRMAN. The first question is, on the amendment to strike out the words "at its first session."

Mr. WETHERILL. I hope that will not be adopted. The fact is, we want the first Legislature to make this provision. That is the time we need it.

The question was taken on the amendment proposed by Mr. Banks, and it was not agreed to.

Mr. NOURSE. It appears to me that the word "and," in the second line, as printed, should be "or." I will move to make that amendment, so as to read: "upon the institution of each action, *or* other proceeding," etc.

The amendment was agreed to by unanimous consent.

No further amendment being offered, the section, as amended, was adopted.

LEAVE OF ABSENCE.

Section 20 was read, as follows:

SEC. 20. The Legislature shall have no power to grant leave of absence to a judicial officer, and any such officer who shall absent himself from the State for upwards of ninety consecutive days, shall be deemed to have vacated his office.

No amendment being offered, the section, as read, was adopted.

COURTS AND JUDICIAL OFFICERS CONTINUED.

Section 21 was read, as follows:

SEC. 21. In order that no inconvenience may result to the public service from the taking effect of this article, no judicial officer shall be superseded, nor shall the organization of the several courts be changed thereby, until the election and qualification of the several officers provided for in the same.

No amendment being offered, the section, as read, was adopted.

The SECRETARY was instructed, by unanimous consent, to re-number the several sections of the article.

JUSTICES' COURTS—AGAIN.

Mr. NOURSE. Would it now be in order to move an amendment to a previous section?

The CHAIRMAN. It would. The article having been read by sections, amendments generally are in order.

Mr. NOURSE. I wish to make a motion, then, in regard to Justices of the Peace. It will be an amendment to the section numbered 11 in the printed copy, now Section 8. I move to amend, by inserting after the words "duties and responsibilities," in the first sentence, the following language:

"Justices of the Peace shall have jurisdiction in all civil cases, wherein the amount in controversary does not exceed, exclusive of interest, the sum of three hundred dollars; and in all criminal cases, except where the offense charged amounts to felony."

Mr. DELONG. You had better say, "all civil cases at law."

Mr. NOURSE. Very well; I will accept that.

Mr. DELONG. I move to add "except as herein otherwise provided."

Mr. NOURSE. I will accept that also, if there is no objection. Now read it as modified.

The SECRETARY read the amendment, as modified, as follows:

"Justices of the Peace shall have jurisdiction in all civil cases at law, wherein the amount in controversy does not exceed, exclusive of interest, the sum of three hundred dollars, and in all criminal cases, except

where the offense charged amounts to felony, except as herein otherwise provided."

Mr. BROSNAN. Is it intended by this amendment that Justices of the Peace shall try misdemeanors, without the intervention of a jury, or an indictment?

Mr. NOURSE. I suppose the provision guaranteeing the right of trial by jury will secure that right, as a constitutional provision, in all cases.

Mr. BROSNAN. Does the gentleman intend that the Grand Jury shall send indictments to Justices' Courts?

Mr. NOURSE. I do not intend that, and I may not have given the subject consideration enough. I think the objection suggested by the gentleman from Storey is a good one.

Mr. BROSNAN. I suppose a Justice of the Peace has no jurisdiction to call a jury for the trial of an indictment.

Mr. NOURSE. I did not intend to give him such jurisdiction.

Mr. BROSNAN. I suppose the gentleman does not intend it, but I take it that the language of the amendment would tolerate that idea. There are many criminal acts that are not felonies, but only misdemeanors, and still they are subjects of indictment.

Mr. NOURSE. Suppose, then, we strike out of the amendment all relating to criminal cases, and leave only that which refers to civil cases.

Mr. BROSNAN. I have no objection to that.

Mr. COLLINS. I would inquire of the chairman of the Judiciary Committee, whether it is the design, by the provision in this section, to force parties into the District Courts, in litigations regarding real estate of merely a trifling value? I refer to that portion of the section which reads as follows:

"And further, that such Justices' Courts shall have no jurisdiction in the trial of cases wherein the title to real estate or mining claims, or the right of possession, is or may be involved."

Mr. BROSNAN. That is the intention.

Mr. COLLINS. Then I trust that the section will not be allowed to pass without very material amendment in that respect. I hope that some provision will be made by which a man may be enabled to collect a small debt, without expending twice as much as the amount of the debt for the costs of litigation. I hope some regard will be shown here to the interests of litigants, as well as the interests of lawyers. I will move to amend by substituting for the clause which I have just read, the following:

"And further, that such Justices' Courts shall have jurisdiction in all civil cases, except where the amount involved shall exceed in value the sum of three hundred dollars."

I wish to make a few remarks on this point, and I think they will be such as will commend themselves to the judgment of this body. There are in Storey County, and in most of the other counties, a great many lots of land and small mining claims. They have prospectively, in many cases, undoubtedly, great value; insomuch that the men who own them would not take a large sum in exchange, but at their present actual valuation in the market, they would not, perhaps, be worth fifty dollars. Now I ask if it is just or proper, in the County of Storey, for example—and I refer to that county solely because I know more about the situation of property there than I do in other portions of the Territory—is it right or just, when an individual jumps a lot or claim so situated, and claims a right to it by possession, to force the owner to go as complainant into the District Court to seek for redress, where it will cost him probably four times as much money as the lot is worth, and where he is likely to be delayed one or two years, since this article has assumed the shape it has, before he can get a trial and judgment in his case? I ask if this is just towards that small class of litigants who surely ought to have some rights under the jurisdiction of this State Government? I am willing to admit that when the amount claimed is worth several thousands of dollars, a man may have a right to force the adverse parties into the District Court to respond; but it occurs to me that where the original amount involved does not exceed in value the sum of three hundred dollars, in justice to the parties who own those small lots and claims, we ought to provide for a cheaper jurisdiction, in these Justices' Courts; and here is the proper place to make such a provision. I hope the amendment will be adopted.

Mr. DELONG. For some reason, which I presume to be a wise one, every State has acted on this subject exactly as the Judiciary Committee proposes that we shall act at this time. They have conferred no power upon Justices' Courts, and this section confers no power, to try either the title or the right of possession to real estate. On the contrary, in every State it is provided that in cases of unlawful entry and forcible detainer, when it appears that the title to real estate must become involved, the case must be certified for trial up to the higher court. The universal concentration of opinion throughout all the States upon this subject, has resulted in a uniform expression, to the effect that Justices of the Peace should not try the right of possession of real estate, or the title to realty in any form.

Now there are certain reasons for this: Justices' Courts are not Courts of Record; they are courts instituted for the trial of cases involving small sums of money, or damages in small amounts, and their proceedings are not surrounded with that degree of dignity and solemnity which causes the judgments of a court to be referred to subsequently for the matters determined therein. It is a court where the pleadings need not be made in writing, where the allegations and answers may be stated orally, and not placed on any record, and where nearly all the formalities which are observed in the higher courts may be dispensed

with. But in the trial of a cause involving realty, those matters are essential, because, though the realty may not at the time be worth three hundred dollars, yet, bye and bye, it may perhaps be worth a hundred thousand, and then the judgment rendered will become of great importance. Around the judgments of Justices of the Peace there are no vouchers of authenticity, and nothing to afford security for that future regard and respect which should be attached in the minds of all citizens to judgments of the courts practically affecting the title to real estate.

I think the amendment would be a dangerous innovation upon past practice. And one thing is certain, that if we adopt it, we shall have to revise this whole article, because we have declared, for instance, in another and preliminary section, that the District Courts shall have original jurisdiction—

"In all cases in equity—also, in all cases at law—which involve the title to or the right of possession of real property, or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand (exclusive of interest) or the value of the property in controversy exceeds three hundred dollars."

Now if we adopt the proposed amendment in this section, we shall have to go back and amend the other, and reconstruct the article, so as to render the whole harmonious with this provision. I could not, myself, support it in such a form.

Mr. BANKS. I have watched the progress of the consideration of this article with a good deal of interest; and, sir, it seems to me that I have observed a disposition to throw all the business possible into the District Courts, however trivial it may be, and leave as little as possible in the hands of the Justices of the Peace. I concede the correctness of the proposition of the gentleman from Storey, (Mr. DeLong,) that all matters involving the title to real estate should be left with the District Courts, but I think we can very properly make a distinction between the right of occupying, and the title to real estate. For example, suppose that A enters upon B's property, not by process of law, but forcibly; why not leave the question of whether he did so enter or not to be decided by a Justice of the Peace? If, however, a matter involving the title to real estate appears in the case, then, like the gentleman from Storey, I would be in favor of transferring it to a Court of Record. When the simple question to be determined is—Did A go and enter upon the premises, and hold possession in a manner not according to law? I do not see why it cannot be left to a Justice of the Peace, and I would like to have that done.

Mr. DELONG. Then, if that is to be done, we have a few minutes ago declared a very great humbug.

Mr. MURDOCK. While speaking of the practices of other States, I will ask the gentleman from Storey (Mr. DeLong) if he is not aware of the fact that in California mining claims, and matters concerning them, are left to be regulated by the miners' meetings, and they have the right to dispose of them, and to dispossess those who do not conform to their rules, and can hold the possession? They have also often been levied upon and sold under justices' executions, issued from the offices of Justices of the Peace.

Mr. DELONG. In the mining communities they have frequently taken possession, but the exercise of such a power, on the part of Justices of the Peace, is not recognized by legislation.

Mr. BROSNAN. On the contrary, in California Justices of the Peace have jurisdiction in actions of forcible entry and unlawful detainer, and they have undertaken to exercise jurisdiction touching mining claims; but the Supreme Court has declared that notwithstanding jurisdiction was given them in cases of forcible entry and unlawful detainer, they could exercise no jurisdiction in respect to the possession of mining claims.

Mr. DELONG. That is the law there.

A MEMBER. Time!

Mr. DELONG. I hope I may be allowed a minute more.

The CHAIRMAN. If there is no objection, the gentleman will proceed.

Mr. DELONG. Now, sir, we have taken particular pains, as a committee, and the Convention has already ratified our action on that, to deprive Justices of the Peace of jurisdiction in cases of forcible entry and unlawful detainer, and for this reason—that if we give them such jurisdiction in this State, we shall find them clothed with authority to determine who shall have the immediate possession of property worth hundreds of thousands of dollars. You cannot limit the amount, for it goes to the form, and applies to anything where the entry is forcible and the detainer unlawful. I assure the gentleman from Humboldt (Mr. Banks) that there is no disposition on the part of the Committee to throw all the business we can into the District Courts. On the contrary, I was opposed, as well as some others, to the limitation of the jurisdiction of justices of the peace to three hundred dollars, and we reported the section without a limitation, against the remonstrance of those who wished to limit it. I had no objection to giving them jurisdiction to the extent of four hundred dollars, but the proposition to fix the limit at three hundred dollars finally prevailed, and I compromised by letting down to three hundred.

The question here is, Shall we give Justices of the Peace jurisdiction in cases affecting the title to realty, or not? The gentleman from Humboldt says he would like to give them jurisdiction in regard to the right of possession, outside of forcible entry and unlawful detainer; but the right of possession is title, because the right of possession is vested, either in some party holding the fee, or in a lessee. I say we have got to do the one thing or the other; we

must either pass the section as we have it now, or adopt this amendment, and then go back and revise the whole article, because we have expressly taken away the jurisdiction of justices in forcible entry and unlawful detainer, and also in equity, so that this proposed change would necessitate corresponding changes throughout the whole article. I think the only proper place to try questions of possession, or title to realty, is in the District Court, because around the proceedings of that Court are thrown that degree of solemnity and perpetuity which alone can give character and standing to judicial decisions.

Mr. BANKS. Suppose a question arises in regard to a party holding possession of a house, possession having been obtained under a lease, and the lease having expired? Would you take that to the District Court?

Mr. DeLONG. That would be a right of possession in common law. The case would depend upon the law in regard to landlords and tenants. Justices of the Peace have also jurisdiction in actions between landlords and tenants, but even that is by a special provision, and is contrary to the common law rule. If the tenant holds over, in violation of the provisions of his lease, under the common law the landlord must bring his action of ejectment. But, at present, under our Territorial Statutes, we have to proceed under the action of unlawful detainer.

Mr. COLLINS. I do not know really how we stand here in regard to the past, but it seems to me that we are not bound to follow in the gray footsteps of the past—that in framing this Constitution, and in organizing a new State, we are not bound to be governed and controlled by all the legal technicalities that have existed, or been established, in all the old States. I have great respect for the institutions of the past, whenever those institutions are such as to commend themselves to my judgment; but when I examine them fully and fairly, in the light of their bearing upon the rights of men, I think I have a right, and I believe it is the right of every other member, to pronounce upon them according to his convictions, regardless of the precedents of the past. I have yet to be made to understand clearly, Mr. Chairman, what peculiar sacredness there is about a mining claim, that although it may not be worth more than ten or fifteen dollars, yet all litigation in regard to it must be carried up to a District Court, with the increased expense necessarily attendant upon litigation in a higher court.

Mr. JOHNSON. I rise to a point of order, which is this, that the gentleman has exceeded his allotted time. I would not have raised the point under other circumstances, but the time for the recess is just at hand.

Mr. COLLINS. I thought I had one minute longer; nevertheless I yield the floor.

Mr. JOHNSON. I move that the committee rise, report progress, and ask leave to sit again.

Mr. DeLONG. I move, as an amendment, that we rise and recommend the passage of the article.

The question was taken on Mr. DeLong's motion, and it was not agreed to.

The question was taken on Mr. Johnson's motion, and it was agreed to; and the committee accordingly rose.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article VI, entitled Judicial Department, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

Mr. CRAWFORD. I move that the time for taking the recess be extended until six o'clock.

The question was taken, and, upon a division, the vote was—ayes, 2; noes not counted. So the motion was not agreed to.

Mr. KENNEDY. I move that we now take a recess until seven o'clock, P. M.

Mr. DeLONG. I move that the Convention adjourn. That takes precedence, I believe.

Mr. KENNEDY. Then I move to amend so as to adjourn until seven o'clock this evening.

Mr. DUNNE. I rise to a point of order, and I will state it very slowly. [Merriment.] It is, that the motion of the gentleman from Storey (Mr. DeLong) cannot be in order, because the time for the recess has arrived.

The question was taken on Mr. DeLong's motion to adjourn, and, upon a division, the vote was—ayes, 8; noes, 10. So the motion was not agreed to.

The hour for the recess (half-past five o'clock) having arrived,

The PRESIDENT declared the Convention at recess until seven o'clock this evening.

EVENING SESSION.

The Convention reassembled at seven o'clock, P. M., and was called to order by the President.

Mr. BELDEN. Inasmuch as there is no quorum present, I move that the Convention adjourn to meet at nine o'clock, Monday morning.

Mr. CHAPIN. Oh, no! I move a call of the House.

CALL OF THE HOUSE.

The motion to adjourn not being seconded—

The question was taken on Mr. Chapin's motion that there be a call of the House, and it was agreed to.

The roll was called, and the following members responded to their names: Messrs. Banks, Belden, Brosnan, Chapin, Crosman, Dunne, Frizell, Gibson, Hawley, Kennedy, Kinkead, Mason, Proctor, Taglabue, Wetherill, and Mr. President—16.

On motion of Mr. CHAPIN, the Sergeant-at-

Arms was directed to arrest and bring in members who were absent without leave.

Messrs. McClinton, Collins, Murdock, Crawford, DeLong, and Parker, severally appeared, stated their excuses, and were allowed to take their seats.

On motion of Mr. CHAPIN, (a quorum being in attendance,) further proceedings under the call were dispensed with.

JUDICIAL DEPARTMENT.

Mr. CHAPIN. I move that the Convention go into Committee of the Whole for the further consideration of the Article on the Judicial Department.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. Chapin in the chair,) and resumed the consideration of Article VI, entitled Judicial Department.

JURISDICTION OF JUSTICES OF THE PEACE.

The CHAIRMAN. The question before the committee is upon an amendment offered by the gentleman from Washoe, (Mr. Nourse,) to Section 8, relative to Justices of the Peace, the amendment being, as subsequently modified, to insert after the words "duties and responsibilities," the following:

"Justices of the Peace shall have jurisdiction in all civil cases at law, wherein the amount in controversy does not exceed, exclusive of interest, the sum of three hundred dollars, except as herein otherwise provided."

To that the gentleman from Storey (Mr. Collins) was understood to offer a further amendment;—the chair does not recollect the exact words.

Mr. JOHNSON. I hope the gentleman from Storey (Mr. Collins) will have an opportunity of concluding his remarks. He had the floor when the article was last under consideration, and I was under the necessity of calling him to order, because the time had nearly arrived for the recess.

The CHAIRMAN. If there is no objection, the gentleman from Storey (Mr. Collins) will have leave to proceed.

Mr. COLLINS. In order that I may have something to speak to, I suppose it is necessary that I should present my amendment in writing.

Mr. JOHNSON. There is no necessity of formally offering any amendment; the whole subject is open for consideration, under the amendment proposed by the gentleman from Washoe (Mr. Nourse.)

Mr. COLLINS. Mr. Chairman, we are now considering, in my estimation, one of the most important articles that has come before this body, and I am very sorry that it should have been among the last subjects presented for the action of the Convention, for it is a matter of too great moment to be passed by lightly. The whole of this article is comparatively novel in its leading features. There are a great many things in it which I heartily endorse, and there are some things in it which I consider unnecessarily hard upon the class of smaller litigants. The fact is, that our judicial system has been framed more with a view to providing for the trial and determination of important cases, than with regard to the much more numerous class of cases of an inferior grade.

My colleague, (Mr. DeLong,) for whose judgment upon all legal matters I entertain very great respect, has objected to my proposition to give jurisdiction to Justices of the Peace in cases affecting real estate, as well as other property, where the value in controversy does not exceed three hundred dollars, whether the title be involved or not; and he brings into the argument to sustain his opposition the old doctrine, which may pass current among unthinking men, which may be good enough for those who are willing to be governed by the authority of precedents, but which is not good among men who are in the habit of thinking for themselves; namely, that the proposition I have submitted is contrary to the usage of all the States in the Union. Well, let us admit that it is, for the sake of the argument—although I would prefer to have the gentleman demonstrate that fact, if it be a fact—yet what of it? Are we, here, bound to follow in the wake of other States? Why should not we show that we are possessed of some originality? Why may we not take hold of the usages of the past, analyze them, examine their constituent parts, and see of what they are made, why they have been established, and what the uses are to which they are put, and their value to society in the jurisprudence of one condition and stage of progress, as contrasted with the jurisprudence of another condition and another stage of progress.

Now my colleague talks about the sacredness and solemnity that must be thrown around the judicial system in respect to every thing which concerns the holding of title to, transferring and possessing of real estate. Sir, if the gentleman will examine the present system in regard to real estate, and then go back and compare it with the old baronial system of England, from which it sprung, and mark the periods when those larger estates gradually became absorbed, passing into the hands of tenants, and ultimately into the hands of freeholders, he will find that vast changes have been made in respect to the transferring of estates. The difference between the old system and that of the present day is as great as that between light and darkness, although the change has been so gradual that you may defy any man to point out the precise time when it happened. The system which was suited to one stage of social development was not such as was suited to the next stage, and consequently modifications and changes have been in progress up to the

present day. The time was formerly when men might carry their title-deeds in their pockets, or keep them in secretaries, or in cases made expressly for the purpose; but in more modern times there has been introduced the system of recording, by which it is advertised to all men that A owns so and so, and B owns so and so, the system adapting itself to a more advanced stage of progress, and so lessening the difficulty, risk, and expense which was formerly attendant upon transfers of real estate. Thus progressive steps have been taken from time to time, until we have at present a system far better adapted to the wants of modern society than was the old baronial system, or even the modified system as it existed at later periods of time. There are books which tell us about the laws of primogeniture and entail, which were once fastened upon society, and even found their way to this continent, but which happily no longer exist among us.

Why, sir, there are a hundred, if not a thousand things, that have at one time or another been adopted and incorporated into State Constitutions, but from which, to-day, my colleague would shrink. It is but a few years since that it was scarcely tolerable anywhere to talk against the system of slavery. That institution was regarded as something too sacred, even to be named. Yet now we have a whole nation that from the Cimmerian darkness of slavery, has, by one elastic bound, vaulted into the broad light of universal emancipation. Then why cannot this one step in the march of improvement be taken? Why cannot the Legislature throw all the guards that are necessary around the inferior courts, even providing, if it is deemed advisable, that a judgment affecting title to lands shall be entered upon the books of the Recorder? We can leave it in the power of the Legislature to throw all the guards that are necessary around such proceedings, so as to insure all the sacredness and solemnity that gentlemen may desire. I believe the Legislature already has full power to meet the exigency, and were I a member of a legislative body, I think I would find no difficulty in framing such a law.

But this is what I regard as the important point: Why should we take from the smaller courts all the business of any importance, and carry it up to the higher courts, where the expense and time involved is so great as to be virtually a denial of justice to the parties litigant? I am speaking now in regard to suits for small houses and lots, such as may be worth perhaps no more than two hundred, two hundred and fifty, or three hundred dollars. If I own such a house or lot, and another man claim it, though he may have no title whatever, must I be forced, in order to defend my right, to carry the matter up to the higher court, there to wait two years, perhaps, before it is reached, and to pay in costs of litigation four times as much, it may be, as the property is worth? I ask if gentlemen would impose such a burden upon the poorer classes of the community, whenever they desire to go into the courts to seek for justice?

Mr. DeLONG. Does the gentleman wish to incorporate a provision giving jurisdiction to Justices of the Peace in forcible entry and unlawful detainer, where the amount involved is not worth more than three hundred dollars? Or does he desire to allow them to have jurisdiction in all cases where the value is not over three hundred dollars?

Mr. COLLINS. I claim that jurisdiction should be given to Justices' Courts upon all questions affecting the right of property, of any kind, where the value does not exceed three hundred dollars.

Mr. DeLONG. You mean in actions at law?

Mr. COLLINS. Certainly. I see no reason why, if a justice is capable of deciding in an action of assumpsit, he may not also take the testimony and balance evenly the scales of justice in an action of this kind. If he can decide justly between man and man in the one case, he can in the other. If I bring suit for a horse, the title may be as complicated as it would be for a house or lot, and yet if the horse does not exceed three hundred dollars in value, the matter may pass in review before a Justice of the Peace, and no one complains. I would like to understand what the distinction is between a horse, and a house, or lot, of the same value. At the present time it is in accordance with the genius of our institutions that every possible inducement should be held out to encourage our citizens in the securing of homesteads, in town lots and farms, because just in proportion as they become interested in the soil do they manifest a permanent interest in the State.

Mr. TAGLIABUE. I rise to a question of order, that the gentleman has exceeded his time. He has spoken twelve minutes already.

Mr. JOHNSON. But my motion was to give him sufficient time to conclude his remarks, and it was agreed to by unanimous consent.

Mr. COLLINS. I do not wish to bore the Convention. I will now offer my amendment, and ask to have it read.

The SECRETARY read as follows:

Resolved, That Section 8, of Article VI, be referred to the Judiciary Committee, with instructions to so change the same as to give Justices of the Peace jurisdiction in all cases where the amount or the value of the property involved does not exceed three hundred dollars, including the title to, and the possession of, real estate and mining claims.

Mr. DeLONG. I suppose you mean the title, and also the right of possession.

Mr. COLLINS. That was handed to me, and I accept it in place of my amendment.

Mr. MURDOCK. I do not know as I would be able to go quite so far as my friend from Storey (Mr. Collins) in relation to extending the jurisdiction of Justices of the Peace; but this one thing I have learned from experience, that men of the legal profession, and legislators, who are profound jurists, and see much fur-

ther than I can, sometimes fail to apply their rules of law practically to the actions of men; and the people are sometimes losers by having too much of law and legislation. I am in favor of giving to Justices of the Peace a sufficient amount of power and jurisdiction. I would like to go so far as to give them jurisdiction in the matter of the right of possession and leasehold, and full jurisdiction in regard to all property, where the jurisdiction of the higher court would not reach the same property.

I recollect the time of the first discovery of gold in California, when the subject was agitated in that State, as to what course ought to be adopted by Congress, or by the Legislature, to regulate the right of possession of mining claims, and I know it was finally agreed upon by the people of California that the proper way was to leave it to the people living in the mines, and consequently knowing better than anybody else their own wants and necessities, to make such rules and regulations as they required, in order to govern themselves. This the mining people did, and I believe I was one among the first of them. I was not learned and able in the law, but I have since had about ten years experience myself, in one way or another, either as a defendant or plaintiff, and I have associated with lawyers so much that if I had been an apt scholar, I might, in fact, have become a good lawyer, without any reading. But, to my sorrow, I have sometimes come across thick, muddy-brained lawyers, that could not apply their legal knowledge to the actions of men in every-day life.

I hope that in this article we shall so arrange the matter of jurisdiction that in small cases men may obtain justice without incurring great expense. There are a great many small cases coming up, as everybody knows, in little communities, in which it would be a great burden to compel the parties to go to a higher court than that of a Justice of the Peace. If we give them jurisdiction in all cases under three hundred dollars, then anybody who is dissatisfied with a decision of a Justice's Court, may take his appeal. We may however get Justices of the Peace intelligent enough to make a correct decision where the case is plain and simple, and when we get such a man, he may entertain hopes afterwards of being chosen to sit on the bench of the higher court. I know that if he should happen to be such a man his elevation would not expand his brain much, but still it would give him more power by enlarging his jurisdiction. All I want is the adoption of some provision for the cheap and speedy disposition of these small cases which so frequently arise. For instance: A owes B fifty or a hundred dollars, and B has no way of getting it, perhaps, except by attaching A's property. In such a case he ought not to be compelled to go to the District Court.

I know of instances in my county, where, in consequence of having no court there, men have suffered wrong without making any attempt to secure redress. Sometimes men have gone upon the land of other men and cut hay, with revolvers at their side while at work, and the owners could get no relief. If they were to obtain a restraining order, what would be the result? Why, both parties would be equally restrained, and the property would then be in the custody of the law, so that it could not be touched by either; and in such a case, how much would it be worth by the time of the meeting of the court next winter? By that time the hay would be worth precious little. Now I say we want, and I insist upon the necessity of having, a more extended jurisdiction of our Justices' Courts, and I think the ends of justice will thereby be promoted. It is true that a great deal of business would in that way be taken out of the higher courts, but if we should happen to select for Justice of the Peace a blockhead, without sense enough to decide between right and wrong, in these petty cases, the parties interested could carry their cases up. The decision of a Justice of the Peace is not final; you can appeal in a case involving twenty dollars, as well as in a larger case, I suppose. I hope this Convention will leave our constitution in such a shape that the Legislature can in the future arrange the matter of the jurisdiction and power of the courts in such manner as will best meet the wants of the people in each county.

Mr. TAGLIABUE. The gentleman's time is up, Mr. Chairman.

Mr. MURDOCK. Very well; I am willing to talk to time, although I have not occupied so much of the time of the Convention as some other members.

Mr. PRIZELL. I was not present when this proposition was first mooted, or when the amendment was first submitted to the committee; nevertheless, I think I understand it sufficiently. I have no doubt that in some respects it is an innovation to give jurisdiction to Justices of the Peace for the trial of title to realty, but I have known in the course of the session of this Convention, other acts to be accomplished, other rules to be established by us, which were no less innovations. We have been attempting to frame a Constitution to suit our own peculiar wants, and we have not regarded old rules and wise saws, but have rather adapted our constitutional provisions to our own situation and requirements.

Now the question resolves itself into this: Is it safe, or is it not, for a man to go before a Justice of the Peace, with the right of trial by jury, which men will certainly have in all cases, to have anything tried in his court affecting either real or personal property, where the value does not exceed three hundred dollars? If the proceeding is safe, then I think that every member will admit that we should say—"Away with precedents and old forms, that stand in the way," because it will most assuredly be an accommodation to the people. There can be no doubt of that. I suppose that

every member understands the proposition as I have stated it. If we can feel safe in going into a Justice's Court to try an amount of three hundred dollars, with the right of trial by jury, and the subsequent right of appeal, then in my opinion, this proposed amendment is a good one.

Then, again, so far as relates to the stability of the matter, by means of a permanent record, I think there can be no valid objection raised, for every lawyer very well knows that although the Justices' Courts are not Courts of Record; nevertheless you can take a transcript in any case from the docket, and enter and record it on the docket of the District Court.

Mr. DeLONG. For what purpose?

Mr. FRIZELL. For any purpose.

Mr. BROSNAN. For the purpose of making a lien, for example.

Mr. FRIZELL. At any rate, that which I have stated is the most important point, and if there be anything lacking, the Legislature can surely fill up the vacuum.

Now I started out by saying that this was to some extent an innovation, but I will state in that connection that from 1850 to 1856, Justices of the Peace in the State of California tried the right and title to mining claims, regardless of their value.

Mr. JOHNSON. Not the title; only actions of forcible entry and unlawful detainer, in which title is not involved.

Mr. DeLONG. They took jurisdiction in the early days of anything they had a mind to.

Mr. JOHNSON. Such were not even under the forms of law.

Mr. FRIZELL. I will say this, that trials of the right and title to property, and the adjudication of the rights of men in that respect, were brought about sooner, and generally in a more satisfactory manner, than they have been since, in that State. I think that this amendment is a good one, because it will relieve the District Courts and prevent their being overcrowded. Gentlemen have been remarkably anxious to procure the establishment of District Courts, and now I want, if possible, to relieve them from an overpressure of business. I am willing to go before a Justice of the Peace and try title to an amount of three hundred dollars, and that will relieve the District Courts, which are otherwise, by technical rules, the only Courts in which title can be tried.

Mr. BROSNAN. I am willing to go as far as any member in the advocacy of any specific line of policy, even though it may be new, provided I can see my way clear. I have, however, upon this question, not only my own experience to guide me, but also the experience of the jurists and legislators of former times, in all the old States of the Union, and I find that in nearly, if not quite all of the older States, this particular jurisdictional power is inhibited to Justices of the Peace. And I will say frankly, here, that there is one species of jurisdiction which I think we might properly entrust to these officers, but not perhaps to the extent that has been advocated by my colleagues who have just now addressed the committee. The jurisdiction to which I allude, is where the relation of landlord and tenant exists between the parties in a suit. We might, perhaps, with safety, grant such jurisdiction, but beyond that I think the experiment would be very dangerous.

Here, let me remark that it is not correct to say that any decision by a Justice of the Peace, touching the question of the right of possession to mining grounds, has ever been tolerated in the State of California by any judicial tribunal speaking authoritatively in that State. On the contrary, I state it as a fact, that wherever Justices of the Peace have assumed to act touching that species of property known as mining claims, as soon as the question was taken to the Supreme Court that tribunal declared Justices' Courts had no jurisdiction. And even in that case the statutes of the State had given to Justices of the Peace jurisdiction in actions of forcible entry and unlawful detainer.

Again, one of the most complicated branches of legal science is that which relates to the investigation of title to real property, and it makes no difference whether such property be of small or of great value, so far as relates to the correctness of a decision, because it may not be worth more than one hundred, or three hundred dollars, or it may be worth thirty thousand dollars; and yet a decision in the one case involves the consideration of questions as nice, as delicate, and as intricate, and requiring as much of legal learning and acumen, as in the other. It matters not, therefore, whether the property involved be worth only two or three hundred dollars, or be of ten-fold more value. Hence, legislators hitherto have thought, in their wisdom, that this class of judicial officers, being generally men who have not been educated in the abstruse science of conveyancing, and the investigation of titles to real estate, who have not been so trained as to render them competent to deliver enlightened judgments upon questions of that kind, upon which those who are most learned in the law sometimes differ, ought not to be intrusted with such jurisdiction. And there is no good reason, in my judgment, Mr. Chairman, why we should give them jurisdiction over questions of this kind, in cases where the property involved is of no more value than three hundred dollars, any sooner than we would give it to them if it were worth three hundred thousand dollars, because it is not the value of the property, but the nature of the questions to be decided, that should be taken into consideration; and as much legal knowledge and skill are required for a correct decision in the one case as in the other.

Mr. COLLINS. I am free to admit that.

Mr. BROSNAN. Then I have to say again that my friend and colleague, whom I so highly regard, for whom I entertain the most pro-

found sentiments of respect, and whose heart is always right, has, in my judgment, committed an error of the head on this question. He desires to give this jurisdiction to Justices of the Peace, because he thinks that it opens the field of legal controversy to the humble and the lowly—that it will be cheaper for them, in the vindication of their legal rights. I will say that I believe that to be practically a mistake, for in the whole course of my legal practice and experience I have never known a question of this character, involving the right of possession to real property, to be commenced before a Justice of the Peace, that was not ultimately appealed to a higher court. No matter what the amount in controversy may be, in every case it is sure to be carried up by appeal. Therefore, if you give this power to Justices' Courts, aside from what I have already advanced, you have this further objection, that you are thereby multiplying, increasing, aggravating the expense and costs to be paid in the end by the loser.

The CHAIRMAN. The gentleman's time has expired.

Mr. FRIZELL. There seems to be between my respected colleague (Mr. Brosnan) and myself an apparent question of veracity. I said that in California for a number of years, questions affecting the right to mining claims were allowed to be tried by Justices of the Peace. Now my colleague, I understand, says that is not correct——

Mr. BROSNAN. I beg the gentleman's pardon; I said that if they did try them they were never taken to the Supreme Court but what they were overthrown by that Court, on the question of jurisdiction.

Mr. FRIZELL. The history of that matter is this: Mining claims were held in an uncertain way in California for a number of years, and it was not till 1855 or 1856 that they were considered as having assumed the nature of realty. I know that for four or five years the right to mining claims was tried in Justices' Courts, because I have tried them myself. I have, as a Justice of the Peace, issued writs of restitution, and put men in possession of claims worth ten thousand dollars.

Mr. JOHNSON. I am opposed to the amendment, but not for the reason that Justices in California did or did not have this jurisdiction, nor do I know that it makes any difference with us whether such jurisdiction has been conferred in other States or not. I do not oppose it merely because it is in opposition to the usages, as they have been settled, and the Constitutional features as they have prevailed in other States, for I am as ready and willing as any other member of the Convention to adopt new propositions, whenever I think they will be productive of benefit. But when a change is proposed which is radical in its character, and which does not in my judgment give an earnest of some resulting benefit, but on the contrary, to my mind, is fraught with much of evil, I do not think it necessary to invoke the precedents of other States in order to find reasons for my opposition, as I find it in the subject matter itself. And so it is in this instance.

Sir, there are several good and sufficient reasons why we should not confer on Justices of the Peace jurisdiction to the extent proposed. One of them has already been suggested by the gentleman from Stowy, (Mr. Brosnan,) namely, that in a case where the amount in controversy does not exceed three hundred dollars, if it involve a question of title to realty, as much judicial learning and ability are required for its correct determination as if the amount involved were tens of thousands of dollars. Now I would be pleased to learn, from the observation and experience of gentlemen who are advocating this amendment, about what proportion, among those who, in a new country, are generally found occupying positions as Justices of the Peace, would in fact be competent to pass upon those difficult questions? And admitting that they have some legal understanding—although every one must concede that they do not always understand even the elementary principles of law—yet, to pursue the inquiry still further, how many of them will be found to have even the mental capacity to understand propositions of such nature when presented?

Now as to the matter of capacity and fitness for place, if that were the only consideration for our guidance, I would very much prefer to reduce the limit of jurisdiction considerably below the figure which has been fixed upon by the report of the Judiciary Committee, and also to diminish still further the classes of cases in which Justices of the Peace may exercise jurisdiction. But there is something more to be considered, and that is, the convenience of the people. I am therefore willing, in order to give the people all proper facilities in the matter of litigation, particularly where they reside in communities at considerable distance from the county seats, where the District Courts are held, to confer upon Justices of the Peace jurisdiction to the amount of three hundred dollars, except in cases involving realty.

But there are other reasons besides the mere incapacity of nine-tenths of those who usually are incumbents of this office, why land cases and mining suits should be without their jurisdiction. For example, in a mining suit, the party bringing the action may allege in his complaint that the property does not exceed in value three hundred dollars, but the defendant may be very reluctant to admit the correctness of such valuation. The plaintiff may be content to make oath that it is not worth more than three hundred dollars, yet we know that there is great variance of opinion as to the value of property, and especially so in relation to mining claims, and other realty. That which you, as plaintiff, may be willing to swear is not worth three hundred dollars, I, as defendant, may be equally as conscientious in swearing

that the same property is worth ten-fold that amount, as in the case adverted to by the gentleman from Storey, (Mr. DeLong.) We have known instances in this Territory of property, which for a long time might not exceed in value a sum which would place the subject matter within the jurisdiction of Justices of the Peace, under this amendment, but which in a few months has risen in value a hundred fold. And yet, perchance, if by this amendment a Justice of the Peace has authority conferred to try causes in regard to such class of property, he might, before its rise in value, award it to one claimant, although soon afterwards it might so greatly enhance in value as to place it beyond the jurisdiction of a Justice's Court.

These are the primary objections in my mind, to the proposed amendment.

The CHAIRMAN. The gentleman's time is up. ["Go on, go on!"]

Mr. JOHNSON. I will not avail myself of the courtesy of members, so as to infract the rule of the committee relative to the limitation of speeches, for when occupying the chair, I intend to hold every member to a strict observance of the rule.

Mr. COLLINS. If the committee will indulge me one moment, I merely want to say one or two words in regard to the proposition of my excellent friend and colleague, (Mr. Brosnan,) which is indorsed by the gentleman from Ormsby, (Mr. Johnson,) to the effect that as much legal knowledge and talent is required to decide in regard to property in real estate, when it only amounts to three hundred dollars, as when it amounts to thirty thousand dollars. I admit it. We are perfectly parallel and harmonious in our views upon that point. And I think those gentlemen will also agree with me when I say that it requires as much legal knowledge and ability to decide a case of assumpsit, the property concerned being in wheat, corn, wood, or anything else, where the amount is only three hundred dollars, as it does where the amount is thirty thousand dollars.

Mr. JOHNSON. I enter a disclaimer on my own part. I maintain that the law of realty is more intricate and difficult than the law of personal property.

Mr. COLLINS. But that has no bearing on my proposition. I propose that Justices of the Peace shall have jurisdiction in all cases within the limitation of three hundred dollars, including real estate and mining claims, and I see no good reason why the limitation should have reference to value in one class of cases, and not in another. In California, Justices of the Peace attempted to exercise jurisdiction in these matters, but the subject was brought before the Supreme Court, and their action was decided unconstitutional. That is exactly what we want to prevent here. The necessity of the times demanded that the Justices' Courts in California should have such jurisdiction, and the courts acted upon such demand. I contend that the same necessity exists here.

Mr. DELONG. Let me suppose a case of this sort: A suit is commenced before a Justice of the Peace for a mining claim, and the plaintiff avers that the value is less than three hundred dollars. The defendant does not deny that averment, and the case goes to trial. One party or the other, of course, wins, and then the case goes to the District Court on appeal, but, pending the appeal, the property increases in value to thirty thousand, or even three hundred thousand dollars. The District Court finds error, and consequently remands the case. Then would my colleague have the case, involving thirty thousand, or three hundred thousand dollars, tried before a Justice of the Peace? If not, what does he think should be done in such a case?

Mr. COLLINS. I think it would be a very lucky thing for the one who obtained the property. [Merriment.] I really do not see the point of my colleague's question.

Mr. DELONG. The question is, who should try the case?

Mr. FRIZELL. The defendant could bring it up to the District Court by writ of certiorari.

Mr. COLLINS. It may be difficult for me to answer satisfactorily all the questions that might be propounded by my colleague, or other gentlemen, and it would be difficult for almost any man to answer every question that gentleman might see fit to propound. But that does not affect the merits of the argument, and I am speaking here in behalf of what I conceive to be a great principle. I enter my protest against the adoption in our Constitution of such a provision, that if a man has a claim to real estate of the value of fifty dollars, it will cost him four times its value to get it settled. I enter my protest against the reasoning of gentlemen on that point. They may be able to see the applicability of their arguments and illustrations, but I do not see it. I know that professional men must have an eye to precedent and past usage, and naturally place reliance upon, and attach great value to, such things; but I stand here outside of all those influences, and I say that, though this may be an innovation, in my judgment the way is clear to make such an innovation.

Mr. WETHERILL. So far as relates to the objection regarding the difficulty of ascertaining the value of property in controversy, that objection may appear good and valid on its face, at first sight, but I do not believe it will stand a close examination. For instance, when you have a suit which brings in controversy the price of a horse, in a Justice's Court, the first duty of the Justice, if the question of jurisdiction be raised, is to ascertain the amount in controversy. The statutes and decisions of California will show that to be the case. Then if the plaintiff makes his election as to the Court in which he will try the case, and does not wish to bring his action in the higher court, but waives his right to do so, that gives jurisdiction to the Justice's Court; although the horse may

be really worth a thousand dollars, yet if the party sues in a Justice's Court, and the matter is decided there, he can only recover three hundred dollars; that is conclusive and final, so far as he is concerned. Consequently that objection, it seems to me, must fall to the ground.

Now let us take this matter of town lots. There are numerous instances in Aurora of controversies in regard to town lots, the value of which is perhaps from ten or fifteen up to one hundred dollars. Are we going to force men into the higher courts in cases of that sort? To do that is tantamount to saying to the plaintiff: "You cannot have justice in the courts." If men must go and spend five times the amount of their property in order to defend it, they are effectually barred out of the courts, and we may as well say to them at once: "Arm yourselves and defend your property, because if you depend upon judicial decisions it will cost you five times its value."

The question was taken on the resolution offered by Mr. Collins, and on a division the vote was—ayes, 9; noes, 10. So the resolution was not agreed to.

Mr. BANKS. I move that the committee rise and report Article VI back to the Convention, with the following resolution by way of recommendation:

Resolved, That Article VI be referred to the Judiciary Committee, with instructions to so amend the same as to give to Justices of the Peace jurisdiction in all cases of forcible entry and unlawful detainer, and mechanics' liens, where the amount involved does not exceed three hundred dollars.

The question was stated on the motion that the committee rise and recommend the adoption of the resolution.

Mr. BANKS. It is now quite evident, Mr. Chairman, that this Convention is indisposed to give jurisdiction to Justices of the Peace, in cases where the title to real estate is involved, but actions of forcible entry and unlawful detainer do not necessarily involve the title to real estate. As, for example, suppose I go upon another man's property, as in the case alluded to by the gentleman from Churchill, (Mr. Murdock,) and proceed to cut hay, or do any other act of the kind, refusing to allow the owner of the property to enjoy it, it is but right that the owner of the property should have some speedy remedy, by the application of which I may be ejected. And in a suit for that purpose, it is not necessary to bring up the question of the title at all; the only question involved between the owner and myself being, did I, or did I not, go there unlawfully and take from him unlawfully the use and enjoyment of that property? And I claim that the man who is competent to exercise the ordinary functions of a Justice of the Peace is quite competent to decide that question.

Then again, there are other cases which may properly be decided by a Justice of the Peace. For example, a man owns a building which may not be very valuable, and he rents it, but when the time for which he rented it expires, the tenant refuses, on some quibble, perhaps, to give it up, or refuses, it may be, to pay the rent. Is it right that in such a case a man should be forced into the District Court, with all the attendant costs, requiring the services of a lawyer to prosecute his case, in order to prove what may be the plainest proposition conceivable? I say it is unfair, and some more speedy means should be provided. In many such cases it would be the rankest injustice to force a man into a District Court, where he may have to wait a year, if there is a crowded calendar, and then have no remedy by which he can obtain the back rents because the defendant may have nothing on which he can secure payment. I hope the article will be amended so that cases of this character, as well as mechanics' liens, where the amount involved does not exceed three hundred dollars, will be referred to Justices of the Peace, and that men will not be forced to go to such expense in litigation that justice will practically be denied.

Mr. DELONG. It appears to me that in attempting to do this thing, gentlemen are falling into an error which they are unable or unwilling to recognize. Now I ask the careful attention of the gentleman from Humboldt, (Mr. Banks,) as he is an exceedingly earnest man. Suppose we confer jurisdiction, as he proposes, to the extent of three hundred dollars, in cases of mechanics' liens. There may be one mechanic who claims a lien of only three hundred dollars, and he brings his suit before a Justice of the Peace. But the law requires that all other parties holding liens on that property, when he commences to foreclose, shall come forward and present their claims, and it is a principle of equity that the first claimant shall be estopped from proceeding until all the other claims are united with his. Consequently, there are several men having liens, to the amount of ten thousand dollars, perhaps, on the same building. They cannot present that case in a Justice's Court, because the court cannot render a judgment for such an amount—and what are you going to do? It is evident that you cannot settle it by one suit, and consequently you must permit a multiplicity of suits. Suppose we engraft in the article the provision which the gentleman suggests, what is to be done in a case where there is one lien of ten thousand dollars, and another of three hundred dollars? Both liens must be paid, and the proper way is to have them all come in together, that the chancellor may make his decree in such manner that full and fair equity may be done to all; but under this provision, the three hundred dollar man would be obliged to go off and commence suit on his own hook. It would certainly increase the difficulties in the way of obtaining justice for the poor man.

Now take the case referred to by the gentleman from Aurora, (Mr. Wetherill.) He speaks of the expense of trying these three hundred

dollar cases in a District Court; but if that argument is a good one, then why not increase the jurisdiction of Justices' Courts to five hundred dollars? It is just as much a hardship to be compelled to go into the District Court with a case involving five hundred dollars, as one involving only three hundred dollars.

Mr. WETHERILL. My object is to provide for cheap litigation for poor men, who have not the means to go into the higher courts.

Mr. DELONG. I think, on the contrary, that you are injuring that very class of men, by driving them into an incompetent court, where they will be likely to employ incompetent attorneys. The gentleman says the expense would be greater in the District Courts, but I do not believe it would be as great in the end. The fees would be about the same. The gentleman from Humboldt, (Mr. Banks,) tells us that before a Justice's Court a man may prove his own case, while he would have to hire counsel in the District Court; but why can he not conduct his own case before the more enlightened judge just as well? He would be just as competent to conduct it in the District Court as in the lower court—and if he desired to do so, he would most decidedly be allowed that right.

And there is another point which my colleague (Mr. Collins) does not recognize, which is this: Suppose you commence a suit for a three hundred dollar lot. It is only worth that amount when suit is brought, and the Justice of the Peace tries it, deciding for the plaintiff, or for the defendant—no matter which; the party defeated appeals, and during the interval, while the appeal is awaiting the action of the higher court, the property rises to be worth thousands of dollars. The District Court then determines that there was error, and sends the case back. The District Judge does not try the case *de novo*, but decides only that error occurred in the court below, and the case is remanded for a new trial. It then goes back to the Justice's Court, and the justice is called upon to decide a case involving property to the amount, perhaps, of thirty thousand dollars. And his decision must involve rules and principles, in regard to realty, which the law student always finds to be the most intricate and difficult portions of the science. Actions of assumpsit, and classes of cases of that character, are the simpler portions of the practice of law; but the moment the student enters upon the study of realty, of deeds, conveyances, leasehold deeds, leases, and tenure, he enters the great world of legal knowledge—that vast storehouse of information of a legal character, handed down from the past—the whole of which no one man on earth is capable of compassing singly. And every one knows how often men are elected Justices of the Peace, without regard to their legal knowledge, but only by reason of their prominence as citizens; and hence it is that they are very rarely competent to mete out justice in one of those intricate cases, and to render a judgment that would be worthy to stand, as it should do, a monument of title for all time to come.

Mr. FRIZELL. I wish to ask my colleague a question. Is a mechanic's lien transferable?

Mr. DELONG. Yes, sir. By assigning the account, you assign the lien. So, if you indorse a promissory note over to me, the note being secured by a mortgage, I become the owner of the mortgage by virtue of holding the note.

The CHAIRMAN. The gentleman's time is exhausted.

Mr. BANKS. If I may be allowed one minute, that is all I require. I wish to reply to that portion of the speech of the gentleman from Storey, (Mr. DeLong,) in which he refers to mechanics' liens, and what would be the course of proceeding in such a case as the one to which he has referred. Now suppose, for instance, that this amendment be adopted, and one man brings his suit under the mechanics' lien law, claiming that he is entitled to receive some amount less than three hundred dollars; then others come in with their claims, amounting in the aggregate to a sum which exceeds three hundred dollars. At the very worst, all that is then required is to transfer the case to a court of competent jurisdiction. Such has been the practice in California, and no doubt it will be in this State, if we shall adopt this proposition.

Mr. DELONG. But you could not transfer your case for want of jurisdiction.

Mr. BANKS. It may be provided for by law, or we can even adopt a provision in the Constitution, for transferring such cases. There is no practical difficulty in the way, as the gentleman's legal knowledge convinces him, I am sure.

Mr. FRIZELL. In deciding for myself what I came here for, I have settled upon the conviction that it was to accommodate the people, and to make a Constitution that will come as near as possible to doing justice to all men. Now it is really beautiful, and there is no man to whom it affords more gratification than to me, to hear a talented legal gentleman like my friend from Storey (Mr. DeLong) diving into the intricacies of the old common law, and trying to bring down that ancient lien to the present time. It is something like Dr. Bellows' lecture the other night. Of course lawyers will endeavor to extend these liens, and to adhere to the precedents of the past, down to the end of time; but for all that you will see innovations made almost every year. And I really cannot blame a lawyer, sir; that is his business. I read law once myself, and have been admitted to the bar in two States, but I do not think I would ever make a good lawyer, because I am too honest. [Laughter.]

Now the resolution of my friend from Humboldt is to give Justices of the Peace jurisdiction in cases of forcible entry and unlawful detainer, and in mechanics' liens, to the amount of three hundred dollars. But then my good

friend from Storey (Mr. DeLong) gets up in opposition to the resolution, and brings down upon it all the intricacies of the common law, with interest. I cannot see the point. He speaks of the case of one man having a lien of ten thousand dollars, and a poor mechanic having another at the same time of three hundred. Well, in that case, I suppose the mechanic's lien must certainly be the first.

Mr. DeLONG. Suppose they are both mechanics' liens?

Mr. FRIZELL. I can see no hardship to result, and I do not believe there is any, that should counterbalance this accommodation to the poorer classes. And the reason why I say no hardship can arise is this: I asked the gentleman a few minutes ago (and I had a special purpose in view), if a mechanics' lien is transferable, and he answered that it is. Then suppose that a man who has a small lien on any particular piece of property brings his suit for foreclosure. If I hold a lien for a larger amount it may be my misfortune, but the only thing I have to do is to come up and buy this poor man's lien. Now is not that plain? And will there really be any hardship in it? I think not.

Then as to giving jurisdiction to Justices of the Peace in the action of forcible entry and unlawful detainer, that is so plainly just and proper, and so simple a matter, that nobody seems to raise an objection to it, and the only question will be in regard to mechanics' liens. I hope the resolution will be adopted, and the article referred accordingly.

Mr. KENNEDY. I desire simply to call attention to one point in regard to these cases of forcible entry and unlawful detainer. I have really been surprised to hear the gentleman from Humboldt (Mr. Banks) and the gentleman from Storey (Mr. Frisell) say that those are simple cases. Now, sir, any lawyer will tell you—and I am willing to leave it to any lawyer—that a case of that character is more difficult to try than a case of ejectment in the District Court, because there are nicer distinctions to be made, and more careful rules are required, than in almost any case in ejectment. And you will find that those cases, when they are commenced in Justices' Courts, are invariably appealed, so that, instead of saving the parties any expense by such a provision, you are really increasing their expenses. That is the actual practical result. I have not known a solitary case of that character commenced in a Justice's Court, which was not appealed, and I have never seen a Justice of the Peace yet who could make correct rulings in a case of that kind. Consequently, whichever way the decision goes, the case is always appealed.

Mr. WETHERILL. In regard to this matter of the appealing of cases, I know that when either party is dissatisfied with the decision, he is very apt to appeal. But which is preferable, in respect to time and expense, to appeal a case from a Justice's Court to another court, in your own county, or to take an appeal to the Supreme Court, there to be kept waiting, perhaps, month after month, until you despair of obtaining justice? If you can appeal the case to the District Court in your own county, you can have your decision without delay, and the expense must be considerably less.

Mr. BROSNAN. As I said before, there are certain branches of which I would like to give the jurisdiction to Justices of the Peace; as, for example, actions of forcible entry and unlawful detainer, and cases where the relation of landlord and tenant exists. It seems to me that it may be well to give them jurisdiction in such cases, where force is used. But these matters it is practicable for the Legislature to define, and you will find that you have already given the Legislature sufficient power, by authorising it to prescribe the duties, powers, and responsibilities of Justices of the Peace.

Mr. COLLINS. I think it cuts them off.

Mr. BROSNAN. No, sir. It reads in this wise:

"The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and shall fix by law their powers, duties, and responsibilities."

Under that clause, it seems to me, all that can be safely intrusted to Justices of the Peace is left to the Legislature.

Mr. JOHNSON. I oppose the resolution offered by the gentleman from Humboldt, (Mr. Banks,) as I think there has already been a sufficient expression of opinion by members of the Convention who are present, in relation to the propriety of enlarging the powers of Justices of the Peace, and also for the further reason that if the article is recommitted to the Judiciary Committee, under this resolution, it involves the necessity of altering and amending several sections, some of which have been already passed upon. Gentlemen exhibit exceeding earnestness respecting certain features, and if brought up again, controversies may arise which will delay the Convention for a day or more, and this most important article will then be left to the last moment, to be, perhaps, hastily disposed of under such circumstances that gross errors will be very liable to occur for want of time to give it proper scrutiny; wherefore much greater injury might be occasioned than would be offsetted by any possible advantage to be gained by the proposition of the gentleman from Humboldt, even if we concede his theory to be correct. For these reasons I hope the resolution will not prevail.

Mr. COLLINS. It occurs to me that the remarks of the gentleman from Ormsby (Mr. Johnson) are hardly in point here. The question is not whether we have time, but it is whether we shall do an act of very great injustice to a very large class of our fellow-citizens. That is the real question. If we have not time to do this to-night, let us take Monday for it. When we came here to frame a Constitution, we came

for the purpose of doing our work faithfully and thoroughly. I did not know, and I do not know now, that there is any time prescribed for finishing our work, and I say, for myself, that I would prefer to stay here six months rather than pass on this, or any other question, with such haste as to do great injustice to a large class of people, and that very class, too, that most needs the protection of the law, if one class can be said to need it more than another. Must we adopt this provision as it stands, because the committee, forsooth, have reported it in this form? If so, then why not adopt the report of the committee *in toto*, without debate or amendment, if we have no right to examine their work?

Mr. JOHNSON. Let me see if I understand the gentleman. I think he errs in one particular, for I have not heard any member defend the report solely because it emanated from the committee. On the contrary, we have already made important changes in matters embraced in the report of the committee.

Mr. COLLINS. I fear I may have done some injustice in that respect, and I would regret, if I know my own feelings, to do injustice to any one. I mean simply to say, on this point, that the committee having made a report, it is urged as a reason why we should not alter it in the manner proposed, that if we do we shall have to undo something else. And I say if we have done wrong, now is the time to undo it. It is better for us to repair the wrong now, although it may require time, than that those who come after us, perhaps for centuries, shall be groaning under burdens which we impose upon them. Let us retrace our steps, and if we have placed anything in the Constitution that is wrong, let us undo it now.

I say again, that the provision as it stands, giving all this jurisdiction to the District Courts, is an act of great injustice, and I do not care how learnedly and profoundly gentlemen may spin out their arguments as to the value of the intricacies of this law in regard to real estate. I remember reading in an old book called the New Testament, about a certain silversmith at Ephesus, who made silver shrines for the worship of the great goddess Diana. And when Paul and others came around preaching the doctrine of Jesus of Nazareth, he attempted to put a stop to it, and for that purpose he and other men of his craft assembled together and cried out "great is Diana of the Ephesians." And so here, the members of the legal profession all at once unite their voices in the cry of "great are the intricacies of the profession." They tell us that no layman has power to comprehend the wonderful properties of a title to a lot of six square feet of ground, even though it is not worth three hundred dollars; that all these intricacies are necessary to be gone into in order to clear up any clouds upon the title. Bah! [Laughter.]

Mr. Chairman, I am not to be frightened by any of these declarations; I am not to be driven from my position by any of these sophistical arguments with which gentlemen, by virtue of their knowledge of the technical terms of the law, endeavor to becloud our judgment. I am going, nevertheless, to hold on to the great fact that this constitutional provision in regard to the jurisdiction of Justices of the Peace, in the form in which it is reported by the Judiciary Committee, is going to do to the great mass of litigants of the future State gross injustice. In the future, therefore, and to the last, I am bound to support this resolution, notwithstanding the difficulties which may be presented, and notwithstanding all the powers of mind, and all the legal learning that may be thought to be required, to enable a man to decide whether A has a better right to a little piece of ground than B.

The CHAIRMAN. The gentleman's time is up. ["Question, question!"]

Mr. BROSNAN. If the gentleman will find one Constitution in the whole number of Constitutions of the States of this Union, in which the jurisdiction of Justices of the Peace is distinctly defined, I will agree to vote with him on the subject. If he will find one Constitution within the covers of this book ("American Constitutions") that distinctly defines their jurisdiction, I will go with him.

Mr. DELONG. That book is not authority.

Mr. COLLINS. I do not care a fig whether it be or not. ["Question, question!"]

The question was taken on Mr. Banks's motion, to rise and report the article back and recommend the adoption of the resolution offered by him, and on a division the vote was—ayes, 9; noes, 9.

Mr. BANKS. The Chairman has not voted.

Mr. DELONG. He seemed to vote.

The CHAIRMAN. In Committee of the Whole, when there is a tie vote the question is lost. The motion is therefore lost.

Mr. FRIZELL. But there was not a quorum voting.

Mr. DELONG. It is not necessary in committee.

The CHAIRMAN. The question now is on the amendment offered by the gentleman from Washoe, (Mr. Nourse.)

Mr. JOHNSON. The gentleman from Washoe is not here to advocate his bantling. I therefore move that the committee rise, report progress, and ask leave to sit again.

Mr. KENNEDY. I move to amend the motion, so as to rise and recommend the passage of the article.

The CHAIRMAN. Does the gentleman from Ormsby accept that?

Mr. JOHNSON. No, sir. I am opposed to the article as it stands, and intend to vote against it unless it is amended.

Mr. KENNEDY. Let us hear the amendment of the gentleman from Washoe.

Mr. JOHNSON. I will withdraw my motion for that purpose.

Mr. KENNEDY. I withdraw my amendment.

The SECRETARY read the amendment offered by Mr. Nourse, as follows:

"Insert after the word 'responsibilities,' in line four, the following words: 'Justices of the Peace shall have jurisdiction in all civil cases at law, wherein the amount in controversy shall not exceed, exclusive of interest, the sum of three hundred dollars, except as herein provided.'"

Mr. JOHNSON. I think there is some mistake about this amendment having been offered.

The CHAIRMAN. No, sir; that is the amendment pending.

Mr. HAWLEY. I rise to a question of order. My point is this, that the amendment is exactly the equivalent of the proposition of the gentleman from Storey, (Mr. Collins,) upon which the Convention has already acted.

Mr. DELONG. No, sir; it is just what the section means now. The amendment does not affect anything, except the language.

The CHAIRMAN. The Chair rules the amendment in order.

Mr. DELONG. I move that the committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to; and the committee accordingly rose.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article VI, entitled Judicial Department, had made some progress therein, and had instructed him to ask leave to sit again thereon.

The report was accepted, and leave was granted accordingly.

Mr. DELONG moved (at a quarter before nine o'clock, P. M.) that the Convention adjourn.

The question was taken, and upon a division the vote was—ayes, 7; noes, 11. So the Convention refused to adjourn.

COMMITTEE OF THE WHOLE—SCHEDULE.

On motion of Mr. KENNEDY, the Convention resolved itself into Committee of the Whole, (the PRESIDENT remaining in the chair,) and resumed consideration of Article XVIII, entitled Schedule.

TERMS OF FIRST STATE OFFICERS.

The SECRETARY read Section 7, as follows:

SEC. 7. The term of State officers, except judicial, elected at the first election under this Constitution, shall continue until the Tuesday after the first Monday of January, A. D. 1867, and until the election and qualification of their successors.

Mr. DUNNE. That is the section which was originally contained in the article on Miscellaneous Provisions, and which the Convention determined should be incorporated into the Schedule.

No amendment being offered, the section, as read, was adopted.

TERMS OF SENATORS.

Section 8 was read, as follows:

SEC. 8. The Senators to be elected at the first election under this Constitution shall draw lots, so that the term of one-half thereof, as near as may be, shall expire on the day succeeding the general election in A. D. 1866, and the term of the other half shall expire on the day succeeding the general election in A. D. 1868; *provided*, that in drawing lots for all Senatorial terms, the Senatorial representation shall be allotted so that in the counties having two or more Senators the terms thereof shall be divided, as near as may be, between the long and short terms.

Mr. DUNNE. I will state that this section has received a great deal of consideration in the committee. It was a very difficult matter to determine exactly how long a term should be allotted to the Senators first elected, the difficulty being to get such an allotment of terms that a proportionate number of Senators and Assemblymen should be elected at each general election, during the continuance of the annual sessions, and the allotment of the terms of Senators was dependent upon the Assembly, as gentlemen will see when the succeeding sections are reached. The desire of the committee was, that an election of Senators and Assemblymen might be had in the fall, immediately preceding the incoming of another administration, and, to accomplish that, various terms were proposed. One proposition was, that one-half of the Senators should hold office for one year, and the other half for three years, and that then the successors of the Senators holding for one year should be elected for three years, and thereafter for four years, bringing it out in the end so that at each election one-half of the Senators would be elected for four years. After considering all the different propositions, none of them seemed to the committee to meet the case so well as to provide that the Senators first elected should draw lots, one-half for the term of two years, and the other half for four years, and after that all Senators to be elected for four years; a subsequent provision being made for new Senators.

Mr. DELONG. There is a little objection to the language of the section. Instead of saying one half of the Senators, I think it should be made to read "one half of the number of Senators."

Another objection to the section which presents itself to my mind is this: It provides that the Senators' terms shall expire immediately after the general election. That may be in November, or September, and the Legislature convenes in January. Now under such an arrangement the newly elected members, in case of a special session, would not be entitled to be qualified and take their positions. Therefore I think it would be better to provide that the terms shall only expire at the time the Legislature convenes. There may be an emergency which will require the Governor to call a special session between the election and the regular time of meeting, and in that event, one half of the Senators having gone out of office, and those elected in their places not being qualified to enter upon their office, an insurmountable difficulty would be presented.

Then there is another thing which has not

been explained, or at least I have not heard the explanation. Take the case of a county which elects but one Senator: with whom would he draw lots, in order to decide when he shall go out and the new Senator come in, or how long shall he hold? These matters have not been explained to me, and I was not present in committee when they were considered.

Mr. DUNNE. It is a very simple matter, if the gentleman will direct his attention to it. There are to be eighteen Senators elected at the first election, and they will draw lots, one against another, so that nine shall hold for two years and nine for four years, and in the arrangement for drawing lots Senators from the same county are to be paired against each other, as far as practicable.

Mr. DELONG. I am satisfied with the explanation on that point; now as to the other?

Mr. DUNNE. In regard to the expiration of the terms, I will state that this is the same provision as that which was contained in the old Constitution. My attention has not been called to it particularly, but I do not see how there can be any very great difficulty.

Mr. MCCLINTON. Is there not a provision somewhere that the Senators shall continue in office till their successors are elected and qualified?

[Mr. KENNEDY in the chair.]

Mr. JOHNSON. The terms of Senators first elected expire on the day succeeding the election of their successors, so that at the time when their terms expire, the terms of their successors begin. Thus there can be no interregnum.

Mr. DELONG. But it will take some time to ascertain who are elected.

Mr. JOHNSON. That will not require a great while. I participated somewhat in the preparation of this section in the former Convention, and I believe that some amendment was there made on my suggestion. The consideration which influenced my action was to prevent any abuse of power by the Executive of the State upon the happening of just such a contingency as that which has been mentioned by the gentleman from Storey (Mr. DeLong.) In the event that the Governor should convene an extra session of the Legislature, after the regular election has been held, it is so worded that it can only be those who have last received the indorsement of their constituents who shall constitute the Legislature at such extra session, rather than those whose terms will have expired, having been elected the year before. The object is to prevent the Executive, if so disposed, (as he possibly might be in case of some radical revulsion in the political elements of the State,) from convening the former members of the Legislature in extra session, it may be for the purpose of electing a United States Senator, thus anticipating the convening of the regular session of the Legislature. If the old body were called together its members might be induced to repudiate the recently expressed will of their constituents, and so a great wrong against the wishes of the people would be perpetrated.

The provision as it now stands relative to the expiration of terms, places it practically out of the power of the Governor to convene a session of the Legislature composed of the discarded elements. That is to say, if he shall convene an extra session between the time of the election and that of the assembling of the regular session of the Legislature, it must be composed of those who come fresh from the the people. As embraced in my proposition, the terms of the new Senators should commence on the day that the terms of the former expired, and further, that that time should be immediately after the day of election. It would be a very rare circumstance indeed that there should arise a public exigency requiring a session of the Legislature within a less time than ten days after the election, and that is the time ordinarily fixed, I believe, both in this Territory and in California, within which the canvassing of the votes for members of the Legislature occurs, and certificates are issued to the persons elected. We can scarcely anticipate any such extraordinary public necessity as would call for the convening of the Legislature between the day of the election and the time when the canvassing of the votes would be completed.

Mr. DELONG. It is admitted, then, that there may be an interval of ten days' time, during which nobody knows who are members of the Legislature. Now, in California, thirty days are allowed for receiving the returns before the Boards of Supervisors are permitted to open and canvass them. With the necessities of this country in that respect, I am not so familiar. It may be that ten days is sufficient here, and that the officers of election can all get in their returns within that time, but I hardly think it is time enough, when we take into consideration what is likely to be the future state of the country, with a great many remote precincts to be heard from in the larger counties. The returns from all these precincts should be received, before the Board of Canvassers are entitled to open and canvass them. And even after the canvass has commenced, some time will be required to complete it before the certificates can be issued, so that there is a still further interregnum. Now the necessities of the State may be imagined to be such as to require the immediate calling together of the Legislature during that interval of time, and yet the Governor would only be able to assemble a Legislature which would be incompetent to act in support of the executive, no matter how great the emergency.

I perceive the motive of the gentleman from Ormsby, (Mr. Johnson,) and it is a good one. I fully recognise the merit of the proposition to make such provision that the Governor, if disposed to act in opposition to the wishes of the people, may be withheld and restrained by

those who have been sent to the Legislature fresh from the people. Yet, in California, they have never yet found any inconvenience resulting from the old system of allowing the terms of the new Senators to commence at the expiration of the terms of the old ones—not at the date of the new election, but after it has been settled and determined who are and who are not members. I never heard of any inconvenience resulting from that system, and as the possibility seems to be very remote of the evil against which the gentleman from Ormsby desires to guard, I would rather prefer to retain that system, for the sake of safety, because we must guard against possibilities as well as probabilities, and we know not what may be the future exigencies of the State. In the formation and adoption of our fundamental law, especially, we must remember that we constitute a part of a nation which is at this time in the very whirlwind and tempest of rebellion, and we should be prepared for whatever exigencies may arise.

Mr. JOHNSON. I desire an opportunity to reply to some of the objections mentioned by the gentleman from Storey. In the first place, according to my present recollection of the territorial law, although I am not quite positive on that subject, the Board of Canvassers is allowed but ten days after the election to canvass the votes cast for members of the Legislature. But independent of all that—and I think this is a sufficient reply to the gentleman's objection—I care not if the Legislature should be convened within three days after the election, the members elected at such election could be admitted, under the provisions of our Constitution. The Governor must issue his proclamation convening the extra session, from ten to thirty days before the Legislature is to assemble; but even if it were only five days—and it would be a most extraordinary emergency, that would require the convening of the Legislature within so short a period after the issuing of the proclamation—still this provision would apply. If it be a single day, or an hour after the election, the old Legislature should go out, and the members newly elected should be entitled to their seats. The gentleman from Storey will bear in mind that we have already adopted a provision in another article declaring that both branches of the Legislature shall be sole judges of the election and qualification of their own members. It is not required that a man shall present as evidence of his right to a seat in such body a certificate of election, or any other particular evidence, but each branch of the Legislature is made the absolute judge of the election and qualification of its own members. Therefore, if it is only five or ten days after the election, that the Legislature is convened, those who have just been elected must be admitted, and the members are immediately vested with authority to judge of the election and qualification of those claiming membership.

Mr. DELONG. But in order to entitle a man, *prima facie*, to a seat, he must present his credentials. Then the Legislature passes upon his case, if there should be any question raised. Without credentials a man could not take his seat in the first instance. Otherwise a mob might take possession of the legislative halls, secure the seats, and proceed to pass upon the question of who are members and who are not.

Mr. JOHNSON. No, sir; I do not understand that the Constitution requires the production of any paper evidence. If the Legislature were assembled, the gentleman from Storey might walk into the door, claiming to be a member, and without producing any certificate, the Legislature would have authority to pass upon his claim. A mere certificate of election amounts to nothing, if there is any other person who can show a better title to the seat, in the opinion of the body, than he who holds such certificate. How often it occurs that a man comes to a legislative body, with his credentials in due form, and yet is turned away, and his seat given to another. That is a very frequent occurrence in legislative bodies acting under a constitutional provision similar to that which we have adopted. And it must be so, because to make a man's right to a seat depend upon a certificate of election would be giving to the Board of Canvassers, instead of the Legislature, the right of judging of the election and qualification of members.

Mr. DELONG. Will the gentleman from Ormsby allow me to ask him if he ever know a man to be allowed a seat in a legislative body in the first instance, without the necessary credentials, issued by the proper officers?

Mr. JOHNSON. Why, sir, such instances are numerous. Take the case, for example, of a members who may have lost his credentials. He is never for that reason excluded. Men came into this Convention and said they had left their credentials at home, and I think there are several gentlemen now holding seats on this floor, who never did present any credentials.

Mr. DELONG. I am not speaking of Conventions, but of legislative bodies.

Mr. JOHNSON. Well, they are governed by the same rules. Legislatures are always made the judges of the election and qualification of their own members. If the gentleman from Storey had lost his credentials, according to his view, he should be turned from the door; but that is scarcely ever done, because there is no importance attached to the mere credentials. It is not a matter of much consequence whether a man has his credentials or not. It is a form which is generally observed, it is true; but it is merely a form, and if a man happens to have no such paper to show, that fact does not operate to exclude him. If a person has been elected, and claims his seat, the Legislature itself judges of his claim.

But independent of that, I say it would be a most rare and extraordinary case in which the exigency should be so great as to call for the

convening of the Legislature within the time allowed to the canvassing officers to pass upon the rights of parties, and make out their credentials. I foresee none of the practical difficulties which the gentleman from Storey seems to apprehend, and the evil which is sought by this provision to be prevented, would be, in my judgment, far greater than any likely to arise from its operation. If we should change the time for the commencement of the terms of Senators to a later period, we should thereby place it in the power of an unscrupulous Executive to override the expressed will of the people. For instance, the people may have fairly expressed their choice for United States Senator, at the latest election, or their preference upon any other great question of State policy; but nevertheless, it would be in the power of the Executive to convene a Legislature composed of those men whom the people may have condemned and sent into retirement, and they could get together and take such action as would override the will, and set at nought the expressed wish of the people. It is to avoid that evil that I would place it beyond the power of any Executive to call together a Legislature which might be opposed to the will of the people.

Mr. DeLONG. I think they would have no right to elect a United States Senator at a special session of the Legislature.

Mr. JOHNSON. That is not by any means an untried experiment, and whatever deference the gentleman may have for precedents, he can find them of such a character in several of the States. He will find one in my own native State, and there are other States in which this great wrong has been perpetrated. I have in my mind a case in point, where such a thing was once done, and when subsequently the people came to revise their Constitution they implanted therein their reprobation of the practice, by placing it beyond the power of the Executive ever to repeat such an act. I hope we shall follow that example, by adopting such restrictive features that a legislative body whose acts have once been passed upon by the people, cannot be called together to the exclusion of those whom the people have more recently elected. ["Question, question."]

Mr. DeLONG. I ask for the reading of the section.

The SECRETARY again read the section.

Mr. DeLONG. I suggest an amendment in the third line, so as to read "one-half of the number," instead of "one-half thereof." Otherwise you might have to cut a Senator in two. [Merriment.]

The amendment suggested was adopted by unanimous consent.

No further amendment being offered, the section, as amended, was adopted.

TERMS OF SENATORS AND ASSEMBLYMEN.

Section 9 was read, as follows:

SEC. 9. At the general election in A. D. 1866, and thereafter, the term of Senators shall be for four years from the day succeeding such general election, and members of Assembly for two years from the day succeeding such general election, and the terms of Senators shall be allotted by the Legislature in long and short terms, as hereinbefore provided, so that one-half thereof, as nearly as may be, shall be elected every two years.

On motion of Mr. DeLONG, and by unanimous consent, the word "thereof," in the last clause, was stricken out, and the words "the number" inserted instead.

Mr. CROSMAN. I am not particularly well posted on this subject, and I would inquire if it was the intention of the Committee on Schedule to provide that the members of the Assembly first elected, shall all of them hold for two years?

Mr. DeLONG. The section provides that the Assemblymen shall hold for two years, and the Senators for four years, after 1866.

Mr. DUNNE. The members of the Assembly are to hold their terms annually, for two years. [Laughter.] I mean that for two years their terms are to be annual, and after that the terms are to be for two years.

Mr. FRIZELL. I suggest that the gentleman's explanation be referred to the Committee on Phraseology. [Merriment.]

Mr. DUNNE. I am quite satisfied with it. For two years the terms of the Assemblymen are to be annual terms.

Mr. DeLONG. I understood the gentleman to say the terms were to be annual for two years.

Mr. DUNNE. And then, in 1866, the two year terms begin.

Mr. CROSMAN. That is, we elect for only one year, until 1866, and then we elect for two years.

No amendment being offered, the section, as read, was adopted.

TERMS OF ASSEMBLYMEN FIRST ELECTED.

Section 10 was read, as follows:

SEC. 10. The term of members of the Assembly elected at the first election under this Constitution, shall expire on the day succeeding the general election in A. D. 1866, and the terms of those elected at the general election A. D. 1866, shall expire on the day succeeding the general election A. D. 1866.

No amendment being offered, the section, as read, was adopted.

COMMENCEMENT OF LEGISLATIVE SESSIONS.

Section 11 was read, as follows:

SEC. 11. The first regular session of the Legislature shall commence on the second Monday of December, A. D. 1864, and the second regular session of the same shall commence on the first Monday of January, A. D. 1866, and the third regular session of the Legislature shall be the first of the biennial sessions, and shall commence on the first Monday of January, A. D. 1867, and the regular sessions of the Legislature shall be held thereafter biennially.

Mr. JOHNSON. I will suggest to the gentleman from Humboldt (Mr. Dunne) that from the reading of the latter clause, there seems to be an omission. Should not the words "commencing on the first Monday in January" be

added? As it now reads, the time of the commencement of the biennial sessions seems to be left uncertain.

Mr. BANKS. I do not see any necessity for a change in that language. It says that the third regular session, which is the session of 1867, shall be the first of the biennial sessions, and shall commence on the first of January, 1867.

Mr. JOHNSON. But it does not state when the succeeding biennial sessions shall commence.

Mr. BANKS. Of course, if the first biennial session commences on the first of January, 1867, the next commences two years thereafter.

Mr. JOHNSON. It may not commence on the same day in the year; it might commence even in February or March.

Mr. BANKS. Can the gentleman suggest more definite language?

Mr. JOHNSON. I have suggested that these words had better be added—"commencing on the first Monday in January."

Mr. DUNNE. I will make the motion to amend by adding those words.

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

CONTINUATION OF COUNTY OFFICERS, ETC.

Section 12 was read, as follows:

Sec. 12. All county officers, under the laws of the Territory of Nevada at the time when this Constitution shall take effect, (except Probate Judges,) whose offices are not inconsistent with the provisions of this Constitution, shall continue in office until the first Monday of January, A. D. 1867, and until their successors shall be elected and qualified. And all township officers shall continue in office until the expiration of their terms of office, and until their successors are elected and qualified.

Mr. CROSMAN. I would inquire, for information, what the effect would be, under the operation of this section, upon the county officers not named in this Constitution, such as assessors, coroners, and collectors. The section provides for continuing in office all county officers whose duties "are not inconsistent with the provisions of this Constitution," but there is no provision in the Constitution for assessors, coroners, or collectors.

Mr. BANKS. Then they are not inconsistent.

Mr. DeLONG. Certainly not.

Mr. TAGLIABUE. I believe no county officers are mentioned.

Mr. CROSMAN. Certainly; you will find that all the county officers are named, in the article on the Executive Department, I think, and provision is made that they shall be elected at a certain time.

Mr. JOHNSON. I did not pay particular attention to the reading, but my opinion would be that those not provided for in the Constitution would be left out.

Mr. CROSMAN. It is in the article on the Legislative Department, I find, that they are enumerated, all but those three to which I have referred, and they are not named at all.

Mr. PROCTOR. This section, it seems to me, should be amended a little, in regard to cases where the parties are elected to office, and their terms expire one year from now; as for instance, in Lander County. There they are to hold office one year from this fall. Would it not be better to provide that they shall continue in office for the terms for which they may have been elected, under the laws of the Territory? Under this section, you keep those officers in office one year longer than the time for which they have been elected.

Mr. JOHNSON. It would be necessary either to shorten the time elsewhere, or to give them the additional year, in Lander County, in order to make the arrangement regular and harmonious, all the officers going out of office at the same period of time throughout the State.

Mr. DeLONG. That is the statement I was about to make. There is a lack of harmony in the election of county officers under the territorial law, every county, I believe, electing its officers this fall, with the sole exception of Lander County, where they were elected last fall. Now we have got either to extend the terms of the county officers in Lander County, or to cut them down in all the other counties, for one year, and the committee came to the conclusion that it was better to continue all the officers until 1867. That gives each one elected this fall his full term, so that it makes no difference to the candidates whether the Constitution shall be adopted or defeated, and consequently they will make the canvass in good faith. It will certainly be no invasion of the rights of the people, and no wrong to the officers elected, as they will merely have the form of government over them changed.

In relation to the question raised by the gentleman from Lyon, (Mr. Crosman,) I will call his attention to Section 32 of Article IV, entitled Legislative Department, as already passed and enrolled.

Sec. 32. The Legislature shall provide for the election by the people of a Clerk of the Supreme Court, County Clerks, County Recorders, who shall be ex officio County Auditors, District Attorneys, Sheriffs, County Surveyors, Public Administrators, and other necessary officers, etc.

Now this section provides that all officers "whose offices are not inconsistent with the provisions of this Constitution shall continue in office." If there is any officer, therefore, not enumerated in the section which I have just quoted, but whose office is not inconsistent, that is, if it is necessary to carry on the administration of public affairs, he will of course be continued, and consequently all the county officers, except the Probate Judges, who are specially named, will hold over, under this section, for the length of time required by law; but any other officer, not elected under the territorial laws, who may be deemed necessary under the State form of government, will have to be elected.

Mr. PROCTOR. There are the Justices of the Peace, who are elected for but one year, and yet this section continues them just one year longer than the term for which they are elected. The County Treasurer, Clerk, Sheriff, Auditor, Assessor, and so on, elected this fall for two years, are all to hold for two years, and those who are not enumerated in this Schedule, I understand, if they come under the head of necessary officers, all hold over. That is, none are legislated out, except unnecessary officers.

Mr. DELONG. Precisely.

Mr. CROSMAN. That was my own understanding, but I thought it better to have the matter understood in the Convention.

Mr. DELONG. That was certainly the understanding in the committee. We debated the matter there, and we finally concluded that this was the best way—that we should either legislate them all out or all in. We thought this plan would be no infringement of the rights of the people, whether the Constitution shall be adopted or not.

Mr. CROSMAN. I think this expression of the Convention will remove all doubt on the subject, if hereafter any question shall arise.

PROBATE JUDGES.

Mr. DUNNE. I move to amend the section by striking out in the third line the words "except Probate Judges," and the parentheses containing those words, and then adding the following at the end of the section:

"*Provided*, That the Probate Judges of the several counties respectively, shall continue in office until the election and qualification of the District Judges of the several counties or Judicial Districts."

The question was taken, and the amendment was agreed to.

No further amendment being offered, the section, as amended, was adopted.

The CHAIRMAN. We cannot do business without a quorum; the Secretary will count the committee.

The SECRETARY reported that only nineteen members were present.

Mr. DELONG. Is it necessary that in Committee of the Whole there shall be a quorum?

The CHAIRMAN. Undoubtedly.

Mr. BANKS. I move that the committee rise.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article XVIII, entitled Schedule, had made some progress therein, and had found itself without a quorum.

Mr. COLLINS. I move that the Convention adjourn until Monday morning at nine o'clock.

The question was taken, and the motion was agreed to.

Accordingly, at half-past nine o'clock, P. M., the Convention adjourned.

NINETEENTH DAY.

CARSON, July 25, 1864.

The Convention met at nine o'clock, A. M., and was called to order by the President.

The roll was called, and the following members responded to their names: Messrs. Banks, Brosnan, Chapin, Collins, Crosman, Dunne, Frisell, Folsom, Hawley, Hovey, Kennedy, Kinkead, Mason, McClinton, Murdock, Warwick, Wetherill, and Mr. President. Present, 18; absent, 21.

CALL OF THE HOUSE.

On motion of Mr. WARWICK, no quorum being present, a call of the House was ordered.

By unanimous consent, the roll-call just taken (as above) was adopted as the roll to be used under the call of the House.

The Sergeant-at-Arms was directed to arrest and bring in the absentees.

Messrs. Proctor and Tagliabue appeared, stated their excuses, and were allowed to take their seats.

Mr. DUNNE. As there is now a quorum, I move that further proceedings under the call of the House be dispensed with.

The question was taken, and the motion was agreed to.

Prayer was offered by the Rev. Mr. RILEY.

The journal of Saturday was read and approved.

Messrs. DeLong and Parker came in, and were recorded as present.

LEAVE OF ABSENCE.

Mr. KENNEDY. I ask indefinite leave of absence for Mr. Hudson. I am informed that he has met with a serious misfortune, and cannot attend.

The question was taken, and indefinite leave of absence was granted to Mr. Hudson.

Mr. DUNNE. I ask indefinite leave of absence for myself.

Mr. CHAPIN. Leave off "indefinite," and I will go for it.

Mr. DUNNE. I will state that the next term of our District Court is held on the first Monday in August, and I have cases in court which I must attend to, and consequently I must get back and prepare them. I have remained here now longer than I ought to have staid.

The PRESIDENT. If the gentleman can possibly remain, I think it very important indeed that he should do so, for a few days longer. If two or three members should leave us now, I fear it would be quite impossible to keep a quorum together.

The question was taken on granting Mr. Dunne indefinite leave of absence, and the Convention refused.

Mr. DUNNE. All I have to say is, that I have a very good horse, and that I intend to start at two o'clock. [Laughter.]

Mr. DELONG. I suggest that the Sergeant-at-Arms stand guard over the gentleman.

Mr. BANKS. I shall tell the Sergeant-at-Arms that I have a better horse that I will lend him.

The PRESIDENT. Perhaps it will be best to put the gentleman's good horse in the custody of the Sergeant-at-Arms. [Merriment.]

THE ENROLLMENT.

Mr. HAWLEY. I wish to state, for the information of the Convention, that Messrs. Gibson and Lockwood have examined Articles III and IV, and are prepared to report them correctly enrolled. For myself, I have been very busy this morning, but I am able to state further, that probably everything will be enrolled by this evening except the Article on the Judicial Department and the Schedule, and we can get through with everything except these matters to-night. If the Enrolling Clerk shall receive these articles to-night he can doubtless finish them by to-morrow morning, so that we may possibly be able to adjourn to-morrow afternoon or evening.

STATE SEAL.

Mr. CHAPIN introduced the following resolution:

"Resolved, That on the adoption of the Constitution by the people, the Secretary of the Territory be authorized to procure a State Seal, (with a press and all necessary appendages,) in accordance with the design adopted by the Convention.

Mr. WETHERILL. That is, in the event of the adoption of the Constitution?

Mr. CHAPIN. The resolution so states. In the event of the adoption of the Constitution, the Secretary of the Territory is instructed to procure a State seal, etc. I have offered the resolution for the reason that the seal will probably be wanted at an early day, and without some such authorization the Secretary cannot procure it and have it ready for use when the State is organized.

The question was taken, and the resolution was adopted.

CONSTITUTION TO BE FORWARDED.

Mr. CHAPIN offered the following resolution:

"Resolved, That the President and Secretary of this Convention be directed, in conjunction with the Governor of Nevada Territory, to forward, immediately after the adjournment of this Convention, to the President of the United States, two certified copies of the Constitution and ordinances, as adopted by the delegates to this Convention—one by the overland route and one by steamer; and also to state to the President that if a majority of legal votes shall be cast for said Constitution for said proposed State of Nevada, then in that event the acting Governor of this Territory will certify the same to the President of the United States by telegraph, and request the President to inform the Governor and the President of this Convention, immediately, by telegraph, of his approval, and proclamation declaring the State of Nevada admitted into the Union.

Mr. CHAPIN. I will state briefly the object of the resolution. Our Enabling Act provides for the manner in which the adoption of our Constitution shall be certified to the President of the United States, and I have made use of the exact words of the Enabling Act, so far as that is concerned. But the resolution further provides that the Constitution as adopted by the Convention shall be forwarded, immediately after this Convention adjourns, in order that the President may have it to examine; also that the President be notified that he will be informed by telegraph, in the event that the Constitution is adopted by the people, and requested to inform the Governor and the President of the Convention of his approval, and proclamation declaring the State admitted, so that we may have the earliest possible official information of that interesting event. Then, having official information of the fact, we shall be prepared to act upon it, and govern ourselves accordingly.

The question was taken, and the resolution was adopted.

Mr. WETHERILL. I move that when we take a recess at twelve o'clock to-day, it be to meet at one o'clock. That gives us one hour, and I think that is sufficient.

Mr. BANKS. I believe there are some committees to meet during the recess.

Mr. CHAPIN. I suggest that if there be any committees that have not finished their business, it will be better to prolong the recess, or at least continue it as long as heretofore, so as to give them time. If there be none, however, I will vote for the motion.

Mr. WETHERILL. For reasons which have been assigned, I will withdraw the motion.

ADDRESS TO THE PEOPLE.

Mr. DeLONG. Considering that such action would be proper on the part of the Convention, I will submit a motion for the appointment of a committee to prepare an address to the people, the President to designate the number and select the committee. I think it would be legitimate, and most decidedly it would be but just and fair to ourselves, that such a committee should be created, charged with the duty of issuing an address to the people of the State after the work of framing the Constitution shall have been completed by us, setting forth the differences between this instrument and the one heretofore framed and submitted to the people, and presenting such facts in connection with the subject as might otherwise escape general observation, and which may appropriately be set forth in such a document; the whole object being simply to show the facts, as for example, the probable expense of a State Government, as compared with the territorial form of government, and the changes that have been made from the Constitution of last year.

I am induced to submit this proposition because I am aware of the fact that many have made up their minds already to vote against the Constitution, without thinking of even so much as comparing it with the former. I know that the motion is not strictly in order at this time, but I trust that it may be entertained

without objection, and disposed of in such manner as the Convention shall judge best.

Mr. BANKS. How many counties are represented here?

The PRESIDENT. Ten.

Mr. BANKS. I will suggest, then, that we have a special committee of ten.

Mr. PROCTOR. That would be too large. A committee of three would be better.

Mr. DeLONG. Let it be a committee of three, then.

The PRESIDENT. I suggest that it would be well to have as large a committee as five. Storey County has a delegation constituting about one-third of the Convention, and I think it would be proper to give that county more than one representative in the committee. Then other portions of the Territory should also be represented in part. I think the committee should consist of at least five or seven members.

Mr. DeLONG. I will make the motion, then, for a committee of seven, and I think we can meet and do the business to-morrow. I should like to have a pretty large committee, and then we can subdivide our labors. There will be some duties to perform of a statistical character, and some of the committee can prepare one part of the address and others another part. Then we can possibly get through before the final adjournment, and if any correction be needed it can be made by the Convention.

Mr. BANKS. I hope there will not be anything, even by implication, involved in this motion, by which it will be considered necessary to have the address confirmed before the adjournment or final separation of the Convention. It must be obvious that the address should be framed with great care, so as not to leave a reasonable opening for attack or criticism on the part of the opposition.

The PRESIDENT. The Chair does not understand that the proposition contemplates the preparing of the address before the final adjournment of the Convention.

Mr. BANKS. I understood that to be the suggestion of the gentleman from Storey, and other gentlemen have remarked that it was usual and proper for Conventions to put forth such addresses. Now, I think, all that is necessary is for the friends of the Constitution and State organization to meet together and agree upon the outline and general policy of the address, and then it may be prepared and signed by the members of the committee, and those who may have to leave can attach their names in blank, as is often done in similar cases. Gentlemen may give their assent to certain general propositions, and then they can leave the matter with a clerk, perhaps, to write out those propositions in proper form, and attach their names. I hope the committee will be appointed, and will take all the time that may be necessary, so that they may be able to prepare an address which shall be proper not only in regard to its matter, but in respect to everything pertaining to it. Then it will win the attention and respect of the people of this Territory, and may secure their support for this Constitution.

Mr. CHAPIN. It strikes me that the committee proposed is rather too large. I will move to amend by making it five, and then add the President, which makes six.

The PRESIDENT. I cannot well give any attention to the subject, because immediately after the adjournment there will be other matters demanding my exclusive attention. I have been obliged to neglect my business almost entirely, during the whole session of the Convention.

Mr. DeLONG. I hope the President will be willing to sacrifice a little more on the altar of patriotism.

The PRESIDENT. I was on a committee of this kind last year, and I found there was a good deal of labor devolving upon me in consequence. It was impossible, however, to get a meeting of the committee, and therefore no address was ever issued.

Mr. CHAPIN. Do I understand that the proposition of my colleague is that the President shall be one of the committee of seven?

Mr. DeLONG. Yes, sir.

Mr. CHAPIN. Then with that understanding I withdraw my amendment.

The question was taken on the motion of Mr. DeLong, and it was agreed to.

The PRESIDENT. In naming the committee, for the sake of enabling a majority to get together, the chair will appoint three members from Storey County, although that is rather an undue proportion. The Chair will appoint as the committee, Messrs. DeLong, McClinton, Collins, Banks, Kennedy, and Brosnan.

Mr. BANKS. Of course it is understood that the President is a member of the Committee.

COMMITTEE OF THE WHOLE—JUDICIAL DEPARTMENT.

On motion of Mr. DeLONG, the Convention resolved itself into Committee of the Whole, (the PRESIDENT remaining in the chair,) and resumed consideration of Article VI, entitled Judicial Department.

JURISDICTION OF JUSTICES OF THE PEACE.

The CHAIRMAN stated that the pending question was on the amendment offered by Mr. Nourse, to insert after the word "responsibilities," in Section 9, the following:

"Justices of the Peace shall have jurisdiction in all civil cases at law, wherein the amount in controversy does not exceed, exclusive of interest, the sum of three hundred dollars, except as herein otherwise provided."

The CHAIRMAN. I will state to the Committee that I advised the gentleman from Washoe (Mr. Nourse) of the action taken, or rather about to be taken, by the Committee, upon his amendment, when it was last under consideration, and the Committee rose without taking a vote. I did so in order that he might have an opportunity of appearing here, and presenting

his views. He stated in that connection that he did not care particularly about the amendment, that he could not be here any way, and that the members of the Convention must exercise their own judgment on the subject.

Mr. COLLINS. Let us hear the section as it would read with the amendment.

The CHAIRMAN. The Secretary will read the section with the amendment, and it is to be hoped that all the members will give strict attention to amendments as they are presented or read, because in that way a great deal of time will be saved. If gentlemen fail to pay attention, time must be lost, and confusion will be produced, by gentlemen repeatedly calling for the reading of amendments.

The SECRETARY read the section as it would stand with the proposed amendment, as follows:

"SEC. 6. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and shall fix by law their powers, duties, and responsibilities. Justices of the Peace shall have jurisdiction in all civil cases at law, wherein the amount in controversy does not exceed, exclusive of interest, the sum of three hundred dollars, except as herein otherwise provided. It shall determine the manner and the cases in which appeals may be taken from Justices' and other Courts; *Provided*, such powers shall not in any case conflict with the jurisdiction of the several Courts of Record; and *further*, that such Justices' Courts shall have no jurisdiction in the trial of cases wherein the title to real estate or mining claims, or the right of possession, is or may be involved. The Supreme Court, the District Courts, and such other Courts as the Legislature shall designate, shall be Courts of Record.

The question was taken on the amendment proposed by Mr. Nourse, and it was not agreed to.

The CHAIRMAN. Amendments generally are still in order.

Mr. BROSNAN. On Saturday last, Mr. Chairman, there was considerable contention, as you doubtless remember, in regard to this subject of the jurisdiction of Justices of the Peace, and I expressed my own views on that occasion, to the effect that there are some instances in which Justices of the Peace might properly have a limited jurisdiction, even in certain cases where the possession of real property may be involved. I have since given the matter some consideration, and am still of the same opinion. I do not mean by possession the right to possession, because, if I understand that subject, the question of right of possession necessarily involves the question of title, especially in cases where there is no actual possession, or what the law calls *polis possessio*. In all such cases a controversy about the right of possession involves the title to land, but in cases where there is an actual occupancy, the title is not necessarily involved.

The views on this subject which I propose to present, with the permission of the Convention, may require a little more than five minutes time. In order to obviate the difficulty which appeared to rest in the mind of my colleague, (Mr. Collins,) and also seemed to press upon the mind of the gentleman from Humboldt, (Mr. Banks,) as well as the difficulty which was presented by my other friend, the gentleman from Esmeralda, (Mr. Wetherill,) I have drawn up a section, or rather an addition to this Section 6, which I think will meet all their objections, although it is necessarily rather long. At the same time, I will say that for myself I am convinced that the section, as it stands now, is amply sufficient to meet all those objections which gentlemen have urged; and for this reason, that the Legislature already has the power to confer upon Justices of the Peace all the powers, duties, and responsibilities that may be deemed proper, provided they do not conflict with the jurisdiction granted to Courts of Record. There is, however, one word omitted in the section, as here printed in the Virginia *Union*, and, I believe, as read by the Secretary. The word "powers" should occur in the fifth line of the section, as reported, but it appears that it has been omitted, and if so, I desire that the word shall be inserted.

The SECRETARY. It is here in the manuscript report, from which I have read.

Mr. BROSNAN. Very well; then under that term the Legislature has power given it already, to confer upon Justices of the Peace all possible jurisdiction not in conflict with the jurisdiction previously granted to the Courts of Record. That is my own belief, and a belief so positive as to leave not a shadow of doubt in my mind. At the same time, for the satisfaction of other members of the Convention, and to meet the objections which gentlemen have presented, I have drawn up this addition to the section, and in trying to have it very plain and satisfactory to all, I have, perhaps, made it a little longer than it should be. I propose, after the word "responsibilities," to strike out all of the section down to and including the word "involved," and insert in lieu thereof the following:

"*Provided*, that such Justices' Courts shall not have jurisdiction of the following cases, viz:

First. Of cases in which the matter in dispute is a money demand or personal property, and the amount of the demand, (exclusive of interest,) or the value of the property, exceeds three hundred dollars.

Second. Of cases wherein the title to real estate or mining claims, or questions of boundaries to land, is or may be involved; or of cases that in any manner shall conflict with the jurisdiction of the several Courts of Record in this State.

And provided further, that Justices' Courts shall have such criminal jurisdiction as may be prescribed by law. And the Legislature may confer upon said Courts jurisdiction concurrent with the District Courts, of actions to enforce mechanics' liens wherein the amount, (exclusive of interest,) does not exceed three hundred dollars; and also of actions for the possession of lands and tenements, where the relation of landlord and tenant exists, or when such possession has been unlawfully or fraudulently obtained or withheld. The Legislature shall also prescribe the manner and determine the cases in which appeals may be taken from the Justices' and other Courts."

This amendment, I think, will obviate all the objections that have been urged by my colleague, (Mr. Collins,) and other gentlemen.

The provision authorizing the conferring of criminal jurisdiction was not in the original section, and I really think it very necessary. For instance, when a complaint is made for assault and battery, or other misdemeanor of small grade, Justices of the Peace clearly should have jurisdiction of the offense.

The CHAIRMAN. In the latter portion of the proviso, relating to actions of possession, is there any limit as to the amount?

Mr. BROSNAN. No limitation is specified, but it only relates to a naked possession, without any reference to the right of possession or title.

Now I will ask the attention of the Committee for a moment to this subject. Our understanding, in this Territory, of the action of forcible entry and unlawful detainer, is in a great measure derived from the manner in which that action has been conducted, and cases under it disposed of, in California. In all well regulated legislation, so far as I understand, the action of forcible entry is made a distinct proceeding and action from that wherein the entry is peaceable, but the detainer becomes unlawful. Indeed, from the origin of the action of forcible entry and unlawful detainer, it has been considered in the light of a criminal proceeding, or, as it is termed in the law books, a *quasi*-criminal proceeding; and in no State that I am aware of, have the two actions—that of forcible entry and that of unlawful detainer—been blended together. In the State of California, however, they are blended in the same legislative act, and our Territory, copying, undoubtedly, from that State, has also blended in its act both proceedings, out of which circumstance much confusion has grown, both in California and in this Territory.

In New York, the action for a forcible entry is proceeded with in this way: complaint is made before a Justice of the Peace, or before a County Judge, that a forcible entry has been made; an inquisition is then directed by him, and a jury is summoned to investigate the matter. In the proceeding before the County Judge, a jury of twelve men investigates the matter, and if they find that a forcible entry has been committed, a writ of entry is issued, and the intruder is placed out of possession. But in actions where the relation of landlord and tenant exists, the Justice of the Peace has jurisdiction of the matter, because the tenant is prohibited from a proceeding to inquire into the right of possession or the title to the property of his landlord. In other words, he is estopped in law from questioning the title or right of possession of his landlord. Having gone in with his permission, and under a contract with him, his mouth is hermetically sealed against alleging anything detrimental to the interest of his landlord, although the landlord may not have the right of possession or title. As between the tenant and the landlord, the tenant is estopped in law from disputing the right of the landlord in cases of that character. I am stating now a general principle of law, and it is manifest that even without any sort of legislative regulation on the subject, Justices of the Peace may safely be entrusted with jurisdiction to that extent, in cases of such a character.

This action of forcible entry, as it has been understood, is an indictable offense. Where one man, or a multitude of people proceed in a threatening manner to take violent possession of any premises, the act is a misdemeanor at common law, but that does not apply except in a case where an actual occupant has been forcibly driven out. It does not apply in cases where there is no occupancy, for there can be no force used in such a case, and therefore the matter cannot be tried before a Justice of the Peace, because where there is an actual occupancy the only way to turn the occupant out is by an action of ejectment, which involves the right of possession. Now I have inserted in this amendment the words "unlawfully or fraudulently." My idea would have been clearly expressed if I had simply used the words "actual possession," but I have employed the word "fraudulently," for the reason that in the course of my experience I have found a case like this—a case in which I was counsel, and which went to the Supreme Court: In the City of San Francisco, down somewhere near Market Street, running out into the water, was a triangular piece of ground leased by a man named Minturn. It was of great value, and he had rented it. On the day that his lease was to expire he gave his tenant notice to quit, and the tenant left the possession at night and another man stepped in and took possession, who was in complicity with the outgoing tenant. In that case, with the complicity of the tenant and the intruder, who came in upon his leaving, a question arose as to whether it was or was not a forcible entry and unlawful detainer. There was much dispute about it, though I never doubted for a moment that it was an unlawful detainer; although even in that view the plaintiff would have had to commence his proceedings again. But it was clearly a fraudulent possession, and it was unlawful. Now in that particular case—and many others might be discovered without much research, where possession has been obtained by fraud, or where the parties holding under a lease have not been willing to give up the premises at the expiration of the lease—the possession not being obtained by force, the parties could not be put out under a proceeding of forcible entry. That is all I desire to say on the subject, and I now submit my amendment.

[Mr. CRAWFORD in the chair.]

Mr. BANKS. I would like to hear the amendment read once from the desk.

The CHAIRMAN. The Secretary will read the section, with the amendment proposed.

The Secretary read as follows:

SEC. 8. The Legislature shall determine the number

of Justices of the Peace to be elected in each city and township of the State, and shall fix by law their powers, duties, and responsibilities; *Provided*, that such Justices' Courts shall not have jurisdiction of the following cases, viz:

First—Of cases in which the matter in dispute is a money demand or personal property, and the amount of the demand, (exclusive of interest,) or the value of the property, exceeds three hundred dollars.

Second—Of cases wherein the title to real estate or mining claims, or questions of boundaries to land, is or may be involved; or of cases that in any manner shall conflict with the jurisdiction of the several Courts of Record in this State;

And provided further, that Justices' Courts shall have such criminal jurisdiction as may be prescribed by law. And the Legislature may confer upon said Courts jurisdiction concurrent with the District Courts, of actions to enforce mechanics' liens, wherein the amount (exclusive of interest) does not exceed three hundred dollars; and, also, of actions for the possession of lands and tenements, where the relation of landlord and tenant exists, or where such possession has been unlawfully or fraudulently obtained or withheld. The Legislature shall also prescribe the manner and determine the cases in which appeals may be taken from Justices' and other Courts. The Supreme Court, the District Courts, and such other Courts as the Legislature shall designate, shall be Courts of Record.

Mr. COLLINS. Will that give a Justice's Court the right of foreclosing a mortgage, in a case where the sum involved is less than three hundred dollars?

Mr. BROSNAN. It will not, sir; nothing but a mechanics' lien.

Mr. BANKS. Then I understand from the gentleman from Storey that in case of the foreclosing of mechanics' liens, suit may be brought, within the amount of three hundred dollars, in a Justice's Court. That is, it may be brought either in a Justices' Court, or the District Court, provided the amount involved is less than three hundred dollars.

Mr. BROSNAN. The mechanic having a lien to that amount, has his choice of courts.

Mr. COLLINS. Will the gentleman be kind enough to state, in a few words, the reason why he thinks it would be unsafe to allow the privilege to a Justice of the Peace to foreclose a mortgage for an amount not exceeding three hundred dollars?

Mr. JOHNSON. That question is not involved in this amendment, and I think it has already been sufficiently discussed.

Mr. COLLINS. I think it is directly involved.

Mr. JOHNSON. Then I rise to a point of order, if it comes to that, that the gentleman from Storey (Mr. Brosnan) has spoken his full time.

Mr. BANKS. I move that the rule be suspended so as to allow him to proceed.

The CHAIRMAN. The rules cannot be suspended in Committee of the Whole.

Mr. JOHNSON. I will state that I do not raise the point for the purpose of preventing the gentleman from Storey (Mr. Brosnan) from speaking, because, as I think the gentleman himself believes, I would listen to him with great satisfaction; but I make the point for this reason, that the explanation sought for, would only serve to open afresh the discussion of the same question which occupied so much of our time on Saturday night, and which is not necessarily involved in this amendment.

Mr. BANKS. I hope that, by general consent, the gentleman from Storey will be allowed to proceed.

Mr. JOHNSON. I object. If the gentleman will force me into the disagreeable position of making an objection in this instance, then I feel it my duty to object.

The question was taken on the amendment offered by Mr. Brosnan, and it was agreed to.

The question was then taken on the adoption of the section, as amended, and it was adopted.

[The PRESIDENT in the chair.]

The CHAIRMAN. General amendments are still in order.

THE FILLING OF VACANCIES.

Mr. BROSNAN. I will inquire of the President of the Convention, before I offer an additional section to this article, whether or not there is anything already adopted, in this Constitution, which provides for the filling of vacancies in the Judicial Department? I have forgotten whether there is such a provision or not.

The CHAIRMAN. There is a section, I think in the article on Executive Department, to the effect that, in a case where provision is not otherwise made, the Governor may fill the vacancy by appointment, until the next election.

Mr. BROSNAN. I had drawn up a section to add to the article on Judicial Department, because I could not recollect that any such provision had been adopted.

Mr. KENNEDY. In Section 8 of the article on Executive Department, the gentleman from Storey will find the provision.

Mr. BROSNAN. I think that will answer the purpose.

Mr. BANKS. Let the Secretary read the section.

The SECRETARY read, as follows:

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the next election and qualification of the person entitled to such office.

Mr. BROSNAN. Now in regard to that, suppose that one of the Justices of the Supreme Court should die—a thing which I hope will not happen during his term of office, at least—and the term for which he was elected should not expire for three or four years thereafter. It is not intended, I apprehend, that the Governor shall, in such a case, fill his place for the rest of the term; and yet I do not see why he may not do it under that section.

Mr. PROCTOR. It says the commission shall expire at the next election and qualification of the person elected.

Mr. BROSNAN. Then the office would have to be filled by election, and I do not see but the man elected would hold the office for the next six years. In that manner the whole system

might become deranged. The vacancy should only be supplied, by appointment, until the election, and then a judge should be elected merely for the unexpired term of the incumbent who has vacated the office.

The CHAIRMAN. I have a very strong impression that there is a section other than that—I do not recollect where it is to be found—which provides for filling vacancies.

Mr. BROSNAN. I have drawn a section to be inserted in this article, which I will read for information.

Sec. —. In case the office of any Justice of the Supreme Court, or District Judge, shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor, until it shall be supplied at the next general election, when it shall be filled by election, for the residue of the unexpired term.

That will make the system harmonious.

Mr. BANKS. That prescribes the manner of filling the vacancies in judicial offices only. Now that, it occurs to me, is just the provision which should be applied in the cases of all other officers. My recollection is, that there is somewhere a provison in relation to filling vacancies, and I ask why not apply the same provision to all the officers in the same section?

Mr. BROSNAN. There is no objection, that I know of. We may say "all other State officers."

The CHAIRMAN. If it is made general in its application, this is probably not the proper place for it. Its more appropriate place, it occurs to me, would be among the miscellaneous provisions.

Mr. BANKS. My recollection was that we had such a section in the article entitled Miscellaneous Provisions, but I do not find it there, and I think I must have been mistaken. I hope the matter will be passed over, so that a section framed in substantially the same language, or at any rate, covering that ground, may be incorporated in the article on Miscellaneous Provisions. Some gentleman present may remember the case of Bodie, in San Francisco, which involved the very question suggested by the gentleman from Storey, (Mr. Brosnan.) It is certainly important to obviate any difficulty of that kind, by the incorporation of some such provision in our Constitution.

Mr. PROCTOR. Would not this answer the purpose?

"The tenure of any office not herein provided for, may be declared by law."

The CHAIRMAN. The Constitution does declare the tenure of these officers, and therefore, unless we adopt some section of this character, it would seem to be in the power of the Executive, in case of a vacancy, to supply the residue of the the term by appointment, and thus preclude a choice by the people, although one or more general elections may take place in the meantime. I was under the impression that we had already adopted such a section somewhere, so framed as to be applicable to all officers. If such is not the case, the only suggestion I wish to make is by way of inquiry, whether the section should not be incorporated in some other place than the article on Judicial Department, if it is to be made applicable to all other officers.

Mr. BROSNAN. I think it is not very material where it is placed.

The CHAIRMAN. General elections occur usually every year, and it seems to me that in the case of a vacancy, the people should certainly have the power of supplying such vacancy at their first election. If there is no objection, we will suspend action whilst gentlemen are consulting on the subject.

Mr. McCLINTON. I move that the section introduced by the gentleman from Storey (Mr. Brosnan) be referred to the Committee on Schedule. I believe that committee has had the article entitled Miscellaneous Provisions under consideration.

The CHAIRMAN. That motion can be entertained by way of a recommendation of the Committee of the Whole.

Mr. HAWLEY. I will move to amend, so as to refer the section to a select committee of three, with instructions to incorporate it among the Miscellaneous Provisions.

Mr. McCLINTON. I will accept the amendment.

Mr. BROSNAN. Upon consultation with other members, I will withdraw it. I think that is the better way.

The CHAIRMAN. Being withdrawn, it can be offered at a future time, to be placed in the appropriate article. If there be no objection, the gentleman has leave to withdraw his amendment.

Mr. KENNEDY. I move that the Committee rise and report the article back to the Convention, with the amendments which have been adopted.

The question was taken, the motion was agreed to, and the Committee accordingly rose.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration Article VI, entitled Judicial Department, had made some amendments thereto, and had instructed him to report the article back to the Convention, and recommend its passage with such amendments.

The report was accepted, the several amendments made in Committee of the Whole were agreed to, and the article, as amended, was ordered to be engrossed for a third reading.

COMMITTEE OF THE WHOLE—SCHEDULE.

On motion of Mr. KENNEDY, the Convention resolved itself into Committee of the Whole, (the President remaining in the chair,) for the consideration of the latter portion of Article XVIII, entitled Schedule.

The CHAIRMAN. The committee had progressed last evening as far Section 12, which

was amended and adopted. The Secretary will read the next section.

THE DEBATES AND PROCEEDINGS.

The SECRETARY read Section 13, as follows:

SEC. 13. At the first regular session of the Legislature, to convene under the requirements of this Constitution, provision shall be made by law for the payment of the publication of six hundred copies of the proceedings of this Convention, in book form, to be disposed of as the Legislature may direct; and the Hon. J. Neely Johnson, President of this Convention, shall contract for, and A. J. Marsh, Official Reporter of this Convention, under the direction of the President, shall supervise the publication of such proceedings. Provision shall be made by law, at such first session of the Legislature, for the compensation of the Official Reporter of this Convention, and he shall be paid in coin, or its equivalent. He shall receive for his services, in reporting the debates and proceedings, fifteen dollars per day during the session of the Convention, and seven and one-half dollars additional for each evening session, and thirty cents per folio of one hundred words for preparing the same for publication; and for supervising and indexing such publication, the sum of fifteen dollars per day during the time actually engaged in such service.

No amendment being offered, the section, as read, was adopted.

CONTINUANCE OF TERRITORIAL OFFICERS.

Section 14 was read, as follows:

SEC. 14. The Governor, Secretary, Treasurer, and Superintendent of Public Instruction of the Territory of Nevada, shall each continue to discharge the duties of their respective offices after the admission of this State into the Union, and until the time designated for the qualification of the above named officers to be elected under the State Government; and the Territorial Auditor shall continue to discharge the duties of his said office until the time appointed for the qualification of the State Controller; *provided*, that said officers shall each receive the salaries and be subject to the restrictions and conditions as provided in this Constitution; *and provided further*, that none of them shall receive to his own use any fees or perquisites for the performance of any duty connected with his office.

No amendment being offered, the section, as read, was adopted.

TERMS OF COURTS.

The Secretary next read Section 17, (the sections as numbered in the report of the Committee on Schedule apparently having been transposed,) as follows:

SEC. 17. The terms of the Supreme Court shall be held at the seat of government of the State, and the terms of the District Courts and County Courts respectively, shall be held at the county seats of such counties respectively; and until provision shall be made by law, the terms of the Supreme Court shall be held at such times as a majority of the judges of said court may appoint. The first term of the District Court in each county, and the County Court in Storey County, shall commence on the first Monday of December, 1864. The Legislature shall provide by law for the time of holding the terms of the Supreme, District, and County Courts.

The CHAIRMAN. I call the attention of the gentleman from Humboldt (Mr. Dunne) to this section. The Convention having determined to dispense altogether with the County Courts, that portion relating to a County Court in Storey County should be stricken out, so as to conform to the previous action of the Convention.

Mr. DUNNE. I move to amend by striking out the words "and the County Court in Storey County;" also, in the last line, the words "and County Courts."

The question was taken, and the motion was agreed to.

Mr. FRIZELL. I think there should be a further amendment. It now reads—"The first term of the District Court in each county," but it should be "in each district," because these District Courts are established in districts, and so named, and in some cases a district comprises more than one county; as, for instance, Nye and Churchill Counties together, constitute one district.

The CHAIRMAN. There was some conversation relative to establishing a District Court in each county.

Mr. WARWICK. The County of Roop is attached to Washoe, also.

The CHAIRMAN. Roop County is not an organized county, and it is attached to Washoe for legislative as well as judicial purposes. I think the only way to obviate the seeming contradiction is to make an exceptional case of the district composed of Nye and Churchill, providing, if you please, that in that district the court shall be held in one county in December, and in the other county the following month. The Legislature may regulate the matter thereafter. The language of the section is general, the intention being to organize the courts at once in each county. It reads—"The first term of the District Court in each county shall commence on the first Monday of December," and unless an exception is made in that case, the query would be whether the court should commence in Nye or in Churchill County.

Mr. MCCLINTON. Suppose we say—"except in such districts as are composed of more than one county?"

The CHAIRMAN. There is only one such district.

Mr. MCCLINTON. But others may be organized hereafter.

The CHAIRMAN. Then the Legislature can provide for the times and places of holding the terms. This section, the gentleman will observe, is only designed to put in operation the machinery of the courts, until such time as the Legislature can fix the terms. I think it will be found that the language here employed can be made to meet the exigencies of the case, by making that one exception.

Mr. FRIZELL. How would it do to let it read "in each county or district?"

The CHAIRMAN. That will not relieve the difficulty. It declares that the term shall commence on the first Monday of December, and the question would then be whether in that district it should commence in Nye, or in Churchill County.

Mr. FRIZELL. If we say "in each county or district," that would leave it to the judge,

I think; though it is not very definite, it is true.

The CHAIRMAN. It is not sufficiently so to make it obligatory. We want to make the language sufficiently definite.

Mr. BANKS. We might amend by a proviso, that in the judicial district composed of the Counties of Nye and Churchill, the first term shall be held on the first Monday of December, in one of the counties to be named.

Mr. McCLINTON. I rise to a question of order. There is not a quorum present.

The PRESIDENT. The Secretary will count the committee.

The SECRETARY reported eighteen members present.

IN CONVENTION.

The PRESIDENT. It will be considered that the Committee of the Whole, being without a quorum, has risen and reported that fact. What is the pleasure of the Convention?

Mr. WARWICK. If the Convention will delay a moment, I think I can bring in a quorum, and so prevent the necessity of a call of the House, or other official action on the subject.

The SECRETARY, (after a few moments' delay,) counted the Convention, and reported that twenty-two members were present.

COMMITTEE OF THE WHOLE—SCHEDULE.

On motion of Mr. McCLINTON, the Convention again resolved itself into Committee of the Whole, (the PRESIDENT remaining in the chair,) and resumed consideration of Article XVIII, entitled Schedule.

The CHAIRMAN. I suggest that there had better be a transposition of these sections. The section providing for the publication of the report of the debates and proceedings, and the compensation of the Reporter, is printed as Section 19 in the old Constitution, and it occurs to me that should properly be the last section in the article, as it appears to be a conclusion of everything else. It had better be placed last, probably, in making up the article for engrossment, and the section we are now considering, (Section 17, as reported,) should be numbered 14.

Mr. BROSNAN. That will make the section to which the Chair refers No. 20.

The SECRETARY. It is Section 13 now.

Mr. BROSNAN. I move to make it the last section in the article.

The CHAIRMAN. If there is no objection that order will be made, and the preceding sections numbered accordingly.

TERMS OF COURTS.

The CHAIRMAN. Section 14, as it is now numbered, which provides for the first terms of the courts, is under consideration.

Mr. PROCTOR. I offer an amendment to that section, to insert after the word "respectively," the following:

"Except in the Fifth District, where the first term of the District Court in the County of Nye shall commence on the first Monday in December, 1864, and in the County of Churchill shall commence on the first Monday in January, 1865."

Mr. DeLONG. Is the Nye County delegation unanimous in support of that amendment?

The CHAIRMAN. Perhaps the gentleman means to inquire in regard to the unanimity of the Churchill delegation.

Mr. DeLONG. I suggest that the amendment be referred to the delegation from Churchill. [Merriment.]

The question was taken on Mr. Proctor's amendment, and it was agreed to.

The CHAIRMAN. I will call attention to the fact that the latter clause of this section has already been adopted in the article entitled Judicial Department. The clause I refer to reads as follows:

"The Legislature shall provide by law for the time of holding the terms of the Supreme and District Courts."

Mr. DeLONG. I move to amend by striking out that clause.

The question was taken, and the amendment was agreed to.

VACANCIES.

Mr. BANKS. Can anybody tell what provision has been made for the filling of vacancies in the county officers? I do not remember of any section in the previous article providing for that matter.

The CHAIRMAN. Such a provision was adopted some time ago. It was provided that the Legislature shall not create any office, the tenure of which shall exceed four years, and power was conferred upon the Governor, I think, to fill vacancies in State offices, the intention being that vacancies in the county offices shall be filled by the respective Boards of County Commissioners.

Mr. BANKS. I think we have adopted no provision for filling vacancies under the State organization.

The CHAIRMAN. An amendment has been prepared, to be offered at a proper time, providing specifically for filling vacancies for a given time. I believe the gentleman from Storey (Mr. Brosnan) has the amendment ready to be presented.

LANDER COUNTY OFFICERS.

Mr. WARWICK. There is a slight error that occurred in making up the report of the Committee on Schedule, which I wish to have corrected, when it shall be in order. It was deemed necessary, in order to make all the future elections take place at one time, to provide that the election of county officers in the County of Lander shall take place this year, instead of next year. That was agreed to in the committee, but in my absence it was somehow overlooked in making up the report. I desire, therefore, to offer an amendment to Section 12, which provides for the continuance of the territorial county officers, whenever such an amendment will be in order.

The CHAIRMAN. General amendments will be in order when we have concluded the reading of the article by sections, and then we can recur to Section 12, if necessary. Section 14 is still undisposed of.

TERMS OF COURTS—AGAIN.

Mr. BANKS. Will the Secretary read Section 14, as now amended.

The SECRETARY read Section 14, as amended, as follows:

SEC. 14. The terms of the Supreme Court shall be held at the seat of government of the State, and the terms of the District Courts shall be held at the county seats of such counties respectively, except in the Fifth District, where the first term of the District Court in the County of Nye shall commence on the first Monday in December, 1864, and in the County of Churchill shall commence on the first Monday in January, 1865; and until provision shall be made by law, the terms of the Supreme Court shall be held at such times as a majority of the judges of said Court may appoint. The first term of the District Court in each county shall commence on the first Monday of December, 1864.

Mr. DeLONG. I move to strike out "Nye," wherever it occurs. [Laughter.]

Mr. PARKER. And insert "Churchill."

Mr. PROCTOR. No; you had better insert "Storey." [Merriment.]

STATE SEAL.

Mr. DeLONG. For information, I wish to ask if the State Seal has been adopted?

The CHAIRMAN. I am informed by the Secretary, that the report of the Committee on State Seal has been adopted, and the resolution reported, providing for a State Seal, was passed. Being simply a resolution, and forming no part of the Constitution, no further action on the part of the Convention appears to be necessary on the subject. The Chair will remind gentlemen that we are now in Committee of the Whole, and Section 14 of the Schedule is under consideration.

TERMS OF COURTS—AGAIN.

Mr. PROCTOR. I offer a substitute for the whole section.

The SECRETARY read the substitute, as follows:

SEC. 14. The terms of the Supreme Court shall, until provision be made by law, be held at such times as the judges of the said court, or a majority of them, may appoint. The first terms of the several District Courts, (except as hereinafter mentioned,) shall commence on the first Monday of December, 1864. The first term of the District Court in the Fifth Judicial District, shall commence on the first Monday of December, 1864, in the County of Nye, and shall commence on the first Monday of January, 1865, in the County of Churchill. The terms of the Fourth Judicial District shall, until otherwise provided by law, be held at the county seat of Washoe County, and the first term thereof be held on the first Monday of December, 1864.

Mr. COLLINS. If my memory serves me correctly, there has been provision made that the Supreme Court shall be held here permanently.

Mr. PROCTOR. Yes, sir; this is simply as to the time of the first term.

Mr. COLLINS. I would like to make a remark upon that when the proper time comes.

The CHAIRMAN. This section is to provide for the time of holding the several terms of the District Courts. In order to render it certain that in the Washoe and Roop District, until otherwise provided by law, the term shall be held in Washoe County, it embraces the places of holding the term for that county, but it only provides for the time of holding the first terms of the other District Courts, and the Supreme Court.

Mr. COLLINS. It seems to me that it will work a hardship upon litigants, since the whole system has been changed by abolishing the County Courts, and giving the District Courts jurisdiction in all cases amounting to over three hundred dollars. It certainly seems to be very hard that a man in Lander County, for instance, should be brought up here on an appeal, in a case amounting to only three hundred dollars, thus eating up over and over again the value of the property in controversy.

Mr. BROSNAN. I will state, by permission of my colleague, that the section we have adopted makes appeals to the District Court final.

Mr. COLLINS. But we had County Courts with original jurisdiction in all cases amounting to between three hundred and five hundred dollars, and now the whole of that jurisdiction is given to the District Courts, and has to come up here, from the District Courts to the Supreme Court, on appeal. The case which would formerly have been tried in the County Court, cannot be taken up on appeal to the District Court, but the appeal must be to the Supreme Court. It seems to me that the arrangement is an admirable one for certain classes, but will work a great hardship to litigants.

Mr. BROSNAN. I am afraid my friend is laboring under a mistake. I understand that under the system which is now in operation, Justices of the Peace do not have as extended a jurisdiction as three hundred dollars. Hitherto I think they have not had jurisdiction over one hundred dollars, and now we propose to extend it to three hundred dollars. Formerly there was an appeal from the Justices' Courts to the County Court of the same county; now there is an appeal from the Justices' Courts to the District Court in the same county, which is equivalent to the appeal to the County Court, heretofore allowed. We extend the jurisdiction of the Justices' Courts, as I have said, and we make the appeal to the District Courts final. Therefore the gentleman's argument in regard to the hardship to litigants, if I apprehend it correctly, is unfounded, because he bases it on the assumption that an appeal from a Justice's Court will lie to the Supreme Court, which is not the case. If a man commences a suit in a Justice's Court in Lander County, it cannot be appealed to the Supreme Court, so

that he suffers no such hardship as the gentleman has supposed.

Mr. COLLINS. The gentleman entirely misapprehends me.

The CHAIRMAN. All this discussion is out of order.

Mr. COLLINS. I wish to put myself right, however. [Leave! Leave!] I certainly did not intimate that there was no appeal from the Justices' Courts to the District Court, or that such an appeal was not final. That is explicitly stated in the article we have adopted. But I say that all cases involving over three hundred dollars in value must be taken up on appeal to the Supreme Court. I was going on to urge, at the proper time, that the Supreme Court should have certain Districts established.

The CHAIRMAN. That would change the whole judicial system.

Mr. COLLINS. Well, I think it had better be changed or abolished.

The question was taken on the substitute offered by Mr. Proctor, and it was agreed to.

The CHAIRMAN. The question is on adopting the section, as amended.

Mr. BANKS. I understood the gentleman from Storey (Mr. Brosnan) to say, or to intimate, that in cases of appeals from the Justices' Courts to the District Courts, the decision of the District Courts should be final.

The CHAIRMAN. Any remarks upon that subject are out of order at this time, as the Chair has already intimated, and we shall certainly not get through with our business very soon, if discussion is permitted on extrinsic matters. The question is on the adoption of the section, as amended. If the gentleman from Humboldt desires to speak to that question, he can do so.

Mr. BANKS. I do not wish to speak, under the ruling of the Chair, but it certainly seems to be very close.

The CHAIRMAN. It may be necessary to rule closer than that before we get through our business.

Mr. BANKS. The remarks I desire to make I know would be out of order, considered alone, but I wish to say something before I get through, with reference to the section.

The CHAIRMAN. If there is no objection the gentleman will proceed.

Mr. DELONG. I object.

The question was taken on the adoption of the section, as amended, and it was adopted.

TERMS OF FIRST STATE OFFICERS.

Section 15 was read, as follows:

SEC. 15. The Governor, Lieutenant-Governor, Secretary of State, State Treasurer, State Controller, Attorney-General, Surveyor-General, Clerk of the Supreme Court, and Superintendent of Public Instruction, to be elected at the first election under this Constitution, shall each be qualified and enter upon the duties of their respective offices on the first Monday of December succeeding their election, and shall continue in office until the first Tuesday after the first Monday of January, A. D. 1867, and until the election and qualification of their successors respectively.

Mr. KENNEDY. I move the adoption of the section as read.

Mr. MCCLINTON. Where will provision be made for the amount of bonds to be given by the State officers for their first terms?

Mr. DELONG. The Legislature will provide for that.

Mr. MCCLINTON. But the Legislature cannot even assemble till after the Governor is sworn in.

The CHAIRMAN. It is not usual for a Governor to give bonds.

Mr. MCCLINTON. But the Secretary of State and Controller must give bonds.

The CHAIRMAN. I will say that the understanding is this, with reference to those officers who are required to give bonds, that before the meeting of the Legislature—and I will mention in that relation, that a section has already been adopted, I think, or, at any rate, it is contemplated, to continue in force the laws of the Territory, so far as they are applicable and consistent with this Constitution, and those laws would certainly be applicable, and not inconsistent, in this matter of prescribing the duties and requirements of all these officers, except those which are not known to the Territorial laws—

Mr. DELONG. The Controller is not.

The CHAIRMAN. But the Territorial Auditor continues till the Controller elected is prepared to enter upon his duties. It might, however, be somewhat a stretch of language to make the Territorial laws apply to the Controller; and it will be remembered that I recommended and advocated the changing of the name of that officer from Controller to Auditor, but the sense of the Convention was adverse to the proposition. It may possibly be necessary to make some special provision relative to the bonds of the Controller, as also of the Surveyor-General.

Mr. MCCLINTON. That is why I made the inquiry. I knew that we had provided for the creation of officers unknown to the Territorial form of government, and the question arose in my mind as to what power there would be to require them to give any bonds at all.

The CHAIRMAN. There is certainly no provision applicable to those officers in the Territorial laws.

Mr. MCCLINTON. Then it would be proper, I suppose, to incorporate here a section making that provision.

Mr. DELONG. Several other questions might arise, as for instance, who are to issue their commissions, and who are to swear them in, if all the Territorial officers are legislated out under the Constitution?

The CHAIRMAN. These are pertinent inquiries, and should receive the attention of the committee, or members of the Convention. At the proper time it will, of course, be in order to move such provisions as have been suggested.

Mr. BROSNAN. I hope that the gentlemen

making these suggestions will draw up the necessary amendments.

No amendment being offered, the section, as read, was adopted.

COMMENCEMENT OF TERMS OF FIRST JUDGES.

Section 16 was read, as follows:

SEC. 16. The Judges of the Supreme Court, District Judges, and County Judges, provided to be elected at the first election under this Constitution, shall be qualified and enter upon the duties of their respective offices on the first Monday of December succeeding their election.

Mr. WARWICK. Was it not the instruction of the Convention to strike out the words "County Judges" wherever they occur?

The CHAIRMAN. Yes, sir. The Secretary will make that amendment.

No further amendment being offered, the section, as amended, was adopted.

The CHAIRMAN. On examining the section just adopted, I think there is another section contained in the Judiciary article, which is substantially the same.

Mr. BROSNAN. This provides that they shall hold from and including the first Monday in December. That makes it right.

The CHAIRMAN. But the Chair understands that the same provision is made in a section adopted previously. We should avoid a repetition.

Mr. McCLINTON. I move to reconsider the vote by which the section was adopted, and I would like to hear the section read to which the Chairman refers.

Mr. BROSNAN. The provision is contained in Sections 3 and 5 of the article on the Judicial Department.

Mr. BANKS. How are the first Supreme Court Judges to agree upon who shall have the long, and who the short terms?

Mr. BROSNAN. They are to cast lots. I will read that portion of Section 5 which relates to the terms of the first District Judges:

"At the first general election under this Constitution, there shall be elected in each of the respective districts, (except as in this section hereafter otherwise provided,) one District Judge, who shall hold office from and including the first Monday of December, A. D. 1864, and until the first Monday of January, in the year 1867."

A similar provision is made in the section relating to the Justices of the Supreme Court.

The CHAIRMAN. Having some personal knowledge of the matter, I will state, as explanatory of the apparent confusion, that the committee having in charge the Schedule and Miscellaneous Provisions was not advised, when its report was made, of the action taken by the Judiciary Committee on this subject, and in the meantime, after the report had been submitted to the Convention, action was had also by the Convention on the report of the Judiciary Committee.

The question was taken on Mr. McClinton's motion to reconsider the vote adopting Section 16, and the motion was agreed to.

Mr. McCLINTON. Now I move that Section 16 be stricken out.

The question was taken, and the motion was agreed to.

COMMISSIONS AND BONDS OF STATE OFFICERS.

Mr. DeLONG. I move to amend by adding to the article the following section:

SEC. —. All officers of State first elected under this Constitution, shall receive their commissions from the Governor of this Territory, countersigned by the Secretary of the same, and shall qualify before entering upon the discharge of their duties before one of the Judges of the Supreme Court of this Territory; and also, the State Controller and State Treasurer shall, before they qualify and enter upon the discharge of their duties, execute and deliver to the Secretary of the Territory an official bond in the sum of fifty thousand dollars each, to be approved by the Governor of this Territory.

Mr. COLLINS. Do I understand that they are not to receive commissions?

Mr. DeLONG. Certainly; all State officers first elected are to be commissioned by the Governor of the Territory.

Mr. COLLINS. That will exclude the District Judges.

Mr. DeLONG. I will accept an amendment to include them. Let it read "all officers of State, and District Judges first elected," etc.

Mr. McCLINTON. I suggest that the Surveyor General should be required to give bonds, also.

Mr. KINKEAD. How long is it proposed that these bonds shall remain in force?

Mr. DeLONG. As long as the officers elected hold their offices.

Mr. KINKEAD. There seems to be no proper proportion observed in these bonds. It occurs to me that the Treasurer's bond should be considerably larger, and the Controller's smaller.

Mr. COLLINS. I suggest whether it would not be better to leave the amount of the bonds entirely to the Legislature.

The CHAIRMAN. The Controller and Treasurer, at least, should give bonds before entering upon their duties.

Mr. DeLONG. I will accept any amendment which the gentleman from Ormsby (Mr. Kinkead) thinks would be proper in reference to the amount of the bonds. I think that unless we adopt some such provision, those officers cannot be required to give any additional bonds, and consequently we had better fix the specific amount which we think they ought to give.

Mr. KINKEAD. Why not leave it to the Legislature to fix the amount of their bonds?

Mr. CHAPIN. I will move to amend the section so as to provide that it shall remain in force until otherwise provided by law.

Mr. DeLONG. As some modifications are clearly necessary, I will withdraw the section for the present.

CONTINUANCE OF COUNTY OFFICERS.

Mr. KINKEAD. I am informed by one of

the reporters that Section 12 of this article has not yet been adopted.

The CHAIRMAN. The Secretary will read Section 12.

The SECRETARY read Section 12, as heretofore amended, as follows:

SEC. 12. All county officers under the laws of the Territory of Nevada, at the time when this Constitution shall take effect, whose offices are not inconsistent with the provisions of this Constitution, shall continue in office until the first Monday of January, A. D. 1867, and until their successors shall be elected and qualified; and all township officers shall continue in office until the expiration of their terms of office, and until their successors are elected and qualified. *Provided*, that the Probate Judges of the several counties respectively, shall continue in office until the election and qualification of the District Judges of the several counties or judicial districts.

LANDER COUNTY OFFICERS—AGAIN.

Mr. WARWICK. I desire to amend the section by adding a proviso that the election of county officers for Lander County shall take place at the general election in November, 1864, at which time the term of the present incumbent shall expire, or as soon thereafter as their successors shall be elected and qualified. This amendment was copied into the Schedule on my motion during the session of the Committee on Schedule, but owing to some oversight in preparing the report, during my absence, it was left out. I believe it is the general desire of the members of the committee that the amendment shall be made.

The CHAIRMAN. I suggest that perhaps the gentleman's amendment had better be varied in phraseology by bringing the term up to the first of January, so as to make it conform to the general system.

Mr. WARWICK. I have no objection, sir; let it be modified in any manner to make it conform. I will ask that the amendment be read by the Secretary as I have offered it.

The Secretary read Mr. Warwick's amendment, as follows:

"*Provided, further*, that the election of county officers in Lander County shall take place at the general election in the month of November, 1864, at which time the term of the present incumbents shall expire, or as soon thereafter as their successors shall be qualified; and the terms of the several officers of Lander County so elected at the general election in November, 1864, shall continue until the first Monday of January, 1867, and until the election and qualification of their successors."

Mr. WARWICK. This is done in order to secure a uniformity in the time of election, as we found in the committee that Lander County would be the only one to elect county officers next year. In order to make the elections in all the counties conform to one general rule, all occurring on the same day, this amendment is offered, with the full concurrence of the Committee on Schedule.

The CHAIRMAN. I would suggest whether the amendment might not seem to embrace the office of Probate Judge, as well as the other county officers?

Mr. WARWICK. It does, undoubtedly, and it was the desire of the committee to change the term of the Probate Judge, as well as the others.

The CHAIRMAN. But would it not be construed as continuing his term of office beyond that of the other Probate Judges?

Mr. WARWICK. It would, if he is not regarded as a county officer. I do not especially name him in the amendment, however, but consider him as coming within the designation of "all county officers."

The CHAIRMAN. Would not the amendment have the effect of extending his term beyond the first Monday of December, when it is proposed that all the Probate Judges shall be in effect superseded?

Mr. WARWICK. If by any construction or implication that might occur, I should like to have it obviated, by all means. It might be made to read—"The terms of the several officers of Lander County, Probate Judges excepted," and so on. If the Chair will allow me a moment, I will endeavor to prepare a substitute.

The CHAIRMAN. Certainly.

Mr. WARWICK. I will move, as a substitute for my former amendment, to add to Section 12 the following:

"*And further provided*, that the terms of the present county officers of Lander County shall expire on the first Monday of December, 1864, and until the election and qualification of the successors of such officers as are not inconsistent with the provisions of this Constitution. The several county officers of said County of Lander shall be chosen at the general election in November, A. D. 1864."

The question was taken upon Mr. Warwick's amendment, as modified, and it was agreed to.

The question was stated on the adoption of Section 12, and it was read as amended.

Mr. KENNEDY. It seems to me this section has been changed a little. I understood that the county officers were only to be continued until the expiration of their present terms, but it now seems, according to the reading of the section, that they are to hold till January, 1867.

The CHAIRMAN. The gentleman is aware that those officers who are elected this fall are elected to hold office till October, 1866. Now it is proposed by this section, upon the recommendation of the Committee on Schedule, to extend the time from October to January.

Mr. KENNEDY. I only wish to understand it.

The question was taken on the adoption of Section 12, as amended, and it was adopted.

COMMISSIONS AND OFFICIAL BONDS—AGAIN.

Mr. DELONG. Now my amendment is prepared. I move to add the following, as an additional section:

SEC. —. All officers of State, and District Judges, shall be commissioned by the Governor of this Territory, which commission shall be countersigned by the Secretary of the same, and shall qualify before entering upon the discharge of their duties, before a Judge of the Supreme Court of this Territory; and also the State Controller and State Treasurer shall, before they qualify and enter upon the discharge of their duties,

execute and deliver to the Secretary of the Territory an official bond, made payable to the people of the State of Nevada in the sum of thirty thousand dollars each, to be approved by the Governor of this Territory, and shall also execute and deliver to the Secretary of State such other or further official bond or bonds as may be required by law.

Mr. BANKS. Are District Judges regarded as State officers?

The CHAIRMAN. No, sir; and it was to obviate any difficulty on that account, as I understand, that the words "and District Judges" were inserted.

Mr. BANKS. Then I understand that all of the District Judges will have to come up to the capital, to be sworn in by one of the Supreme Court Judges.

The CHAIRMAN. Does the gentleman from Humboldt wish to offer an amendment?

Mr. BANKS. It says "before a Judge of the Supreme Court," but that does not help the matter, I think. The difficulty is this, that it involves the necessity of the District Judges coming to the capital, or going elsewhere, and the distance may be quite as great, in order to appear before a Justice of the Supreme Court.

Mr. DELONG. I have no objection to modifying that language.

Mr. BANKS. I will move, then, to substitute the words "before any officer authorized to administer oaths."

The CHAIRMAN. The mover of the section is preparing an amendment.

Mr. BANKS. Very well; I withdraw mine.

Mr. DELONG. I will modify the section so as to read as follows:

SEC. —. All officers of State, and District Judges, first elected under this Constitution, shall be commissioned by the Governor of this Territory, which commission shall be countersigned by the Secretary of the same, and shall qualify before entering upon the discharge of their duties before any officer authorized to administer oaths under the laws of this Territory; and also the State Controller and State Treasurer shall, before they qualify and enter upon the discharge of their duties, execute and deliver to the Secretary of the Territory an official bond, made payable to the people of the State of Nevada, in the sum of thirty thousand dollars each, to be approved by the Governor of this Territory; and shall also execute and deliver to the Secretary of State such other or further official bond or bonds as may be required by law.

Mr. MCCLINTON. My question has not yet been satisfactorily answered—whether the Surveyor-General is to be required to give any bonds at all?

Mr. DELONG. Not till the Legislature meets.

The CHAIRMAN. That is not an important office.

Mr. MCCLINTON. Very well; I am content.

The question was taken on the adoption of the section proposed by Mr. DeLong, as finally modified, and it was adopted.

FILLING VACANCIES.

Mr. BROSNAN. I have two additional sections to the Schedule to propose, and I ask that they be numbered according to their order in the instrument. First, I will offer the following:

SEC. —. In case the office of any Justice of the Supreme Court, District Judge, or other State office, shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor, until it shall be supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.

The question was taken, and the section was adopted.

SUPPORT OF LOCAL OFFICERS.

Mr. BROSNAN. I now propose the following:

SEC. —. Each county, town, city, and incorporated village, shall make provision for the support of its own officers, subject to such regulations as the Legislature may prescribe.

The question was taken, and the section was adopted.

Mr. PARKER. I move that the committee rise and report the article back to the Convention, with the amendments adopted.

The question was taken, the motion was agreed to, and the committee accordingly rose.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration the remaining sections of Article XVII, (as renumbered,) entitled Schedule, had made some amendments thereto, in which the committee asked the concurrence of the Convention, and had instructed him to report the same to the Convention, and recommend the passage of the article with such amendments.

The report was accepted, the amendments made in Committee of the Whole were adopted, in gross, and the article, as amended, was ordered to be engrossed for a third reading.

LEAVE OF ABSENCE.

Mr. DUNNE. I ask leave to say a few words upon a question of privilege. When I asked indefinite leave of absence this morning, many members of the Convention did not understand, as I have since learned, that I made the request for very urgent reasons. Some gentlemen did not know that I gave any reasons, and supposed that I was asking leave of absence merely because I was tired of the Convention, and wanted to get away. I only want to say now that such is not the case, and that on the contrary I have been very much interested in the proceedings of the Convention, and would be willing to remain two weeks longer, if it were necessary, and I could possibly do so; but there are very urgent reasons, indeed, why I should return home. I will now renew my request for indefinite leave of absence.

The question was taken, and indefinite leave of absence was granted to Mr. Dunne, in accordance with his request.

The hour of twelve o'clock having arrived,

The PRESIDENT declared the Convention at recess until two o'clock.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., and was called to order by the President.

JUDICIAL DEPARTMENT.

Mr. CROSMAN, from the Committee on Engrossment, reported correctly engrossed Article VI, entitled Judicial Department.

Mr. CROSMAN. In examining this article, as engrossed, the committee find what we think is an error, occurring in Section 2, to which I desire to call the attention of the Convention.

The PRESIDENT. In consequence of the noise of the falling rain, [a very heavy shower of rain was falling,] it will be necessary for gentlemen to pay particular attention, in order to hear the proceedings.

Mr. WARWICK. With the most intense attention, it is almost impossible, in this part of the chamber, to hear a word that is said. I think it would be the part of wisdom to suspend for a few minutes.

Mr. DELONG. Suspend what? The rain?

Mr. WARWICK. No, sir; the business. [Merriment.]

Mr. CROSMAN. I ask for the reading of Section 2, as engrossed.

The Secretary read, as follows:

SEC. 2. The Supreme Court shall consist of a Chief Justice and two associate Justices, a majority of whom shall constitute a quorum; *provided*, that the Legislature, by a majority of all the members elected to each branch thereof, or at any time thereafter, provide for the election of two additional associate Justices, and if so increased, three shall constitute a quorum. The concurrence of a majority of the whole Court shall be necessary to render a decision.

Mr. CROSMAN. There is evidently an error in the engrossment of this section. The words "or at any time thereafter," in the opinion of the committee, are out of place, and the committee recommend that those words be stricken out, and the word "may" inserted instead.

The PRESIDENT. In the old Constitution, the reading of the section was, that the Legislature may "at its second session, or at any time thereafter, provide for the election," &c. The restriction as to the particular session of the Legislature having been removed, of course the following words, "or at any time thereafter," are merely surplusage.

The amendment recommended by the Committee on Engrossment was adopted by unanimous consent.

INFORMAL RECESS.

Mr. CHAPIN. I move that we suspend proceedings and take an informal recess, until this glorious shower is over.

The question was taken, the motion was agreed to, and the Convention accordingly took an informal recess.

The Convention was again called to order by the President, at twenty-five minutes before three o'clock.

JUDICIAL DEPARTMENT.

Article VI, entitled Judicial Department, was taken up, on its third reading.

The Secretary read Sections 1, 2, and 3, as follows:

SECTION 1. The judicial power of the State shall be vested in a Supreme Court, District Courts, and in Justices of the Peace. The Legislature may also establish Courts, for municipal purposes only, in incorporated cities and towns.

SEC. 2. The Supreme Court shall consist of a Chief Justice and two associate Justices, a majority of whom shall constitute a quorum; *provided*, that the Legislature, by a majority of all the members elected to each branch thereof, may provide for the election of two additional associate Justices, and if so increased, three shall constitute a quorum. The concurrence of a majority of the whole Court shall be necessary to render a decision.

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at the general election, as provided by law, and shall hold office for the term of six years from the first Monday of January next succeeding their election; *provided*, that there shall be elected at the first election under this Constitution, three Justices of the Supreme Court, who shall hold office from and including the first Monday of December, A. D. 1866, and continue in office thereafter two, four, and six years respectively, and from the first Monday of January next succeeding their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall classify themselves, and determine by lot the term of office each shall fill, and the Justice drawing the shortest term shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the senior Justice in commission shall be Chief Justice.

THE CHIEF JUSTICE.

[Mr. LOCKWOOD in the chair.]

Mr. JOHNSON. I do not propose to renew the discussion regarding the number of the Supreme Court Judges, for I am willing to accept as final the decision of a majority, that for the first term there shall be only three instead of five judges, although it is well known that I would prefer the larger number. I am content with having given to the Legislature power to increase the number, for I think that scarcely two years will have passed, ere the Legislature will provide for such increased number. But the difficulty to which I wish to direct attention is this: I do not find anywhere that the Constitution fixes the tenure of office of those additional Judges, except in this section, where it reads that the Justices of the Supreme Court "shall hold office for the term of six years from the first Monday of January next succeeding their election." Now the point which suggests itself to my mind is in regard to the latter clause of the section, where it is provided that they shall draw lots. It then proceeds thus:

"And the Justice drawing the shortest term shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the senior Justice in commission shall be Chief Justice."

We shall experience no trouble, so long as there are but three Justices, but in the event of an increase of the number to five, there will be two elected at the same time, and the commis-

sions of these two Justices will necessarily bear the same date. Then when the period shall arrive for determining who shall be the Chief Justice, as between these two additional members of the Supreme bench, the query at once presents itself, which shall be regarded as the senior justice in commission? Where is the constitutional provision found, or in what manner can it be determined, under the provisions of the Constitution as we now have it, who shall be the Chief Justice?

Mr. BROSNAN. I appreciate the remarks of the gentleman from Ormsby, (Mr. Johnson,) but I take it that in case the Legislature shall authorize the election of two additional Justices of the Supreme Court, they will, at the same time when they do so, make provision for that very exigency.

Mr. JOHNSON. I do not see how the Legislature will have the power to do so, unless we adopt some provision conferring such power. All legislation must of course be in conformity with the Constitution, and the only provision on the subject therein contained would be this, that after the terms of the first incumbents the justice having the senior commission shall be the Chief Justice.

Mr. BROSNAN. We might adopt a provision to guard against the occurrence of the difficulty. I think there is such a provision in the old Constitution.

Mr. JOHNSON. Such a provision is contained in the former Constitution. All I desire in regard to this matter, is to carry out the views of the majority of the Convention. In the Judiciary Committee, it appears, the latter portion of the original section was stricken out, and I can very readily understand the reason it was done. It was because the idea at first prevailed in the committee of having five judges, with power in the Legislature to decrease the number to three, and if that course had been pursued, certainly no difficulty could ever arise. As the section now stands, I submit whether these words are not necessary, as they are contained in the original section of the former Constitution:

"And in case the commission of any two or more of said justices shall bear the same date, they shall determine by lot who shall be Chief Justice."

Mr. BROSNAN. I think the gentleman from Ormsby is correct, and I hope he will offer the amendment.

Mr. JOHNSON. I would prefer that it should emanate from the Chairman of the Judiciary Committee.

Mr. BROSNAN. I will ask unanimous consent to add to the section the words which the gentleman from Ormsby has read.

The amendment was adopted by unanimous consent.

JURISDICTION OF SUPREME COURT.

[The PRESIDENT in the chair.]

Section 4 was read, as follows:

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also, in all cases at law in which is involved the title or the possession of real estate or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, (exclusive of interest,) or the value of the property in controversy, exceeds three hundred dollars; also, in all other civil cases not included in the general subdivisions of law and equity, and also in all criminal cases in which the offense charged amounts to felony, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any District Court in the State, or before any judge of said Courts.

Mr. BROSNAN. That language is not right in the first part of the section. It should read: "also in all cases at law in which is involved the title, or the right of possession to, or the possession of real estate," etc. You will find the correct language in Section 6, relative to the District Courts.

Mr. DeLONG. What is the difference between "the possession of," and "the right of possession to?"

Mr. BROSNAN. I put in the words "right of possession," because I found them in the old Constitution. I do not think there is much difference. I will ask unanimous consent to amend Section 4 by inserting after "title" the words "or the right of possession to."

The amendment was agreed to by unanimous consent.

Mr. BROSNAN. I have another amendment, of a verbal character. It is to insert in the last clause, after the words "upon petition," the words "by or," so as to read—"shall have power to issue writs of habeas corpus to any part of the State, upon petition by, or on behalf of any person," etc.

The amendment was agreed to by unanimous consent.

Mr. McCLINTON. I would like to inquire whether some of these provisions do not now conflict with other provisions contained in this article, whereby we have enlarged the jurisdiction of Justices of the Peace, giving them jurisdiction in certain cases where rights of real property are involved?

The PRESIDENT. This section relates only to the Supreme Court, in defining its appellate power. It will be seen that there can be no conflict.

Mr. McCLINTON. But there is some section which provides that all real property, or the right of possession thereto, shall be subject only to the jurisdiction of the District Courts, and the Supreme Court.

The PRESIDENT. I think not, sir. This section, however, only refers to the Supreme Court, defining the appellate power of that court, and I cannot see in this any apparent conflict, the Supreme Court being an Appellate Court, and Justices' Courts being courts of original jurisdiction.

Mr. McCLINTON. There may be no conflict between the Supreme Court and the Justices' Courts, and yet I think there may be between the District Courts and Justices' Courts.

The PRESIDENT. We have not yet reached the sections relating to these courts.

Mr. BANKS. In this section the words "on questions of law alone," seem to me to stand a great way off. It occurs to me that it would read better and clearer to say—"The Supreme Court shall have appellate jurisdiction, on questions of law alone, in the following cases."

Mr. BROSNAN. That is not the intention, exactly. The intention is to confine the jurisdictions to questions of law alone in cases of felony; because the Supreme Court must have jurisdiction upon questions of fact in certain other cases, as in equity cases.

Mr. BANKS. The intention is, then, to qualify only the last clause—"also in all criminal cases, etc., on questions of law alone?"

Mr. BROSNAN. Yes, sir.

Mr. BANKS. I submit, then, that the language is certainly liable to the construction of qualifying all that precedes it in the section. I suggest whether it would not be better to transpose the sentence, so as to read—"and also on questions of law alone, in all criminal cases in which the offense charged amounts to felony." Would not that render the meaning more clear? If the gentleman from Storey thinks it is unnecessary, however, I will not offer an amendment.

Mr. BROSNAN. I do not think it is necessary myself, but still I should like to have the opinion of members of the bar upon that sentence as it stands. I will ask the other gentleman from Humboldt, (Mr. Dunne,) what he thinks of it; and I will state, for the information of the gentleman from Humboldt, (Mr. Banks,) that in most of the State Constitutions this form of language is employed, and it is the understanding of the bar generally, that the qualification relates simply to questions of felony, or what are indictable offenses.

The PRESIDENT. I think the Convention understands that is the meaning of it—that the qualifying words, "on questions of law alone," apply only to cases of felony. Yet the transposition would certainly render the provision more definite; and the suggestion is not a criticism upon language used by the Chairman of the Judiciary Committee, seeing that he has adopted the words of the old Constitution.

Mr. BROSNAN. I will accept the amendment. I certainly have no feeling about it.

The amendment suggested by Mr. Banks was adopted by unanimous consent.

JUDICIAL DISTRICTS AND DISTRICT JUDGES.

Section 5 was read, as follows:

SEC. 5. The State is hereby divided into nine Judicial Districts, of which the County of Storey shall constitute the first; the County of Ormsby the second; the County of Lyon the third; the County of Washoe the fourth; the Counties of Nye and Churchill the fifth; the County of Humboldt the sixth; the County of Lander the seventh; the County of Douglas the eighth; and the County of Esmeralda the ninth. The County of Roop shall be attached to the County of Washoe for judicial purposes, until otherwise provided by law. The Legislature may, however, by a vote of two-thirds of all the members elected to each branch thereof, provide by an alteration in the boundaries or division of the districts herein prescribed, or otherwise, for increasing or diminishing the number of the Judicial Districts and judges therein; but no such change shall take effect except in case of a vacancy, or the expiration of the term of an incumbent of the office. At the first general election under the Constitution, there shall be elected in each of the respective districts, (except as in this section hereafter otherwise provided,) one District Judge, who shall hold office from and including the first Monday of December, A. D. 1864, and until the first Monday of January, in the year 1867; after the said first election, there shall be elected at the general election which immediately precedes the expiration of the term of his predecessor, one District Judge in each of the respective Judicial Districts, (except in the first district, as in this section hereinafter provided,) The District Judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of four years (excepting those elected at said first election) from the first Monday of January next succeeding their election and qualification; *provided*, that the first Judicial District shall be entitled to and shall have three District Judges, who shall possess co-extensive and concurrent jurisdiction, and who shall be elected at the same times, in the same manner, and shall hold office for the like terms, as herein prescribed in relation to the judges in other Judicial Districts.

The PRESIDENT. I will inquire whether there be any provision to the effect that the County of Roop shall be attached to Washoe, for other than judicial purposes?

Mr. BROSNAN. I think not.

The PRESIDENT. Then I will suggest that should be done. Is it not quite as important to attach it to Washoe County for legislative and revenue as for judicial purposes?

Mr. KENNEDY. Will not the laws govern that matter?

The PRESIDENT. They might, or they might not.

Mr. PARKER. It is provided for in the laws of the Territory.

The PRESIDENT. So it is in regard to judicial purposes. Now we have provided in the Constitution that the County of Roop shall be attached to the County of Washoe for judicial purposes, and if it be important and necessary to provide for the one matter, is it not equally as important to provide that it shall be attached to Washoe for other purposes? If we had left the provision out of this judicial article altogether, so that it would not appear anywhere in the Constitution, it might not have been necessary to make any further provision on the subject than is made by continuing in force the Territorial laws. This, however, is not the proper place for the incorporation of the further provision which I have suggested, and I only call attention to the matter now, in order that it may not be neglected.

There is another clause of this section, however, from which, it seems to me, something must have been omitted. It reads as follows:

"The Legislature may, however, by a vote of two-thirds of all the members elected to each branch there-

of, provide by an alteration in the boundaries or division of the districts herein prescribed, or otherwise, for increasing or diminishing the number of the Judicial Districts and judges thereto."

The SECRETARY. That is exactly as the original reads.

Mr. BROSNAN. Perhaps the words "for an alteration" would be preferable to "by an alteration."

The PRESIDENT. I suggest that it should read "provide by law for an alteration."

Mr. DUNNE. It seems to me to read correctly now. It says the Legislature may provide, "by an alteration in the boundaries or divisions of the districts," for the creation of any other districts.

The PRESIDENT. But how will the Legislature do that, unless you use the word "law?" In the first place, the question arose as to whether we had given the power to the Legislature to make any such change, and here we confer the power, by a two-thirds vote of the Legislature; but in what manner is the power to be exercised, unless the word "law" is used?

Mr. DUNNE. I do not know that I understand the point. The language is the same as in the old Constitution.

The PRESIDENT. It is true that the same language was employed in the old Constitution, but there may have been an accidental omission, or it may be the result of inattention. I do not wish, however, to take the matter out of the scope of the intention of the majority, but simply to make the meaning more definite.

Mr. BROSNAN. I will accept the gentleman's suggestion, and move to insert the words "law for," so as to read "provide by law for an alteration," etc.

The question was taken on agreeing to the amendment, and Mr. COLLINS voted "no."

The PRESIDENT. If there is a single objection the amendment cannot be made at this stage.

Mr. COLLINS. I will withdraw my objection, but I cannot see the force of the desired amendment. If the Legislature is required to make such a provision by law, and if a bill for that purpose is passed, and not signed by the Governor, the same two-thirds vote which is required to pass it originally can certainly pass it again over his objections. We have made this an exception by requiring a two-thirds majority, and the query seems to be whether the Legislature could exercise the power independent of the Governor.

The PRESIDENT. I think it is very clear that under this provision as it now reads, without the amendment, the Legislature could make such a provision independent of the executive.

Mr. BROSNAN. That was not the intention.

Mr. COLLINS. Well, I withdraw my objection.

The question was again taken on the amendment offered by Mr. Brosnan, and it was agreed to unanimously.

The PRESIDENT. I suggest that as the District Judges first elected are to hold to the first Monday of January, 1867, which does not include that day, the term of their successors should be fixed "from and inclusive of the first Monday of January."

Mr. BROSNAN. I had made a memorandum of an amendment upon that point. I move to insert after "from," the words "and including," so as to read: "and shall hold office for the term of four years (excepting those elected at said first election) from and including the first Monday of January," etc.

The amendment was adopted by unanimous consent.

Mr. BANKS. I do not very well understand the concluding portion of this section, and I will ask as a favor to have the whole section read over.

The SECRETARY read the section, as amended.

[Mr. KINKEAD in the chair.]

Mr. BROSNAN. I wish to propose an amendment to the last part of the section, in relation to the judges of the First Judicial District. I ask unanimous consent to add, at the end of the section, the following:

"Any one of said District Judges may preside on the impannelling of Grand Juries and the trial of indictments, under such rules and regulations as may be prescribed by law."

Mr. BANKS. That amendment seems to cover the ground, and do away with all such objections as were raised the other day to the especial provision for the Storey County District. It will render clear and definite what some claim to be now the meaning of the section—that each of these three judges may preside as a court, independent of any other court, or any other judicial personage. Each is independent of his fellows in that court. While gentlemen are consulting as to the proper wording of the amendment, I may be allowed to say that, as has been suggested by my friend from Washoe, (Mr. Nourse,) this arrangement of a system for the District Court in the First Judicial District, seems to have a theological origin, being the very embodiment of our theological idea of the Trinity—three in one, and each one the whole. I never did, and do not pretend to understand the metaphysical doctrine of the Trinity, and I am in the same condition in regard to this section.

Mr. JOHNSON. Do you understand that each one is equal to the other two, and himself also?

Mr. BANKS. Yes, sir. Each one is the whole court. [Merriment.]

Mr. BROSNAN modified his amendment, so as to read as follows:

"Any one of said District Judges may preside at the impannelling of Grand Juries, and the presentment and trial on indictments, under such rules and regulations as may be prescribed by law."

Mr. JOHNSON. I hope this amendment will be adopted. The system provided for the First

District certainly does not accord with what I believe would be the best form of a judicial system, but the sense of the Convention has been manifested in opposition to my own views in that particular, and it is not for the minority to throw any obstacle in the way of a system which the majority adopts, or of any amendment calculated to render it as perfect as possible. I think, myself, that the amendment is a very essential and necessary one, and as it is proposed by the chairman of the Judiciary Committee, I hope it will receive that unanimous consent which is necessary at this stage of our proceedings.

Mr. BANKS. The amendment seems to have the effect of empowering the Legislature to direct how those judges shall work. I am in favor of it.

The amendment was adopted by unanimous consent.

Mr. PROCTOR. There is one paragraph upon which I want to get the opinion of the Committee on Phraseology, or somebody else. As I understood the Secretary to read, it says that no such vacancy shall be filled, in the time of a vacancy, or on the expiration of the term of the incumbent, or to that effect.

Mr. BROSNAN. No; it says no such change shall take effect, except in the case of a vacancy.

Mr. PROCTOR. I do not think it was so read. Will the Secretary read it again?

The SECRETARY. It reads—"But no such change shall take effect, except in case of a vacancy, or the expiration of the term of the incumbent of the office."

Mr. PROCTOR. That is right.

Mr. BANKS. The amendment just adopted on the motion of the gentleman from Storey, (Mr. Brosnan,) provides, as I understand it, that laws shall be passed regulating the manner of doing that kind of business which pertains to impanneling juries, and the finding and trial of indictments, and it does not go beyond that. I will ask the chairman of the Judiciary Committee if it goes beyond conferring power to make such laws in regard to indictments as the Legislature shall see fit to make?

Mr. BROSNAN. I do not understand that it limits the power of the Legislature in any respect. The Legislature has all the power it ever had, in regard to indictments.

Mr. BANKS. Has the Legislature power to regulate the dividing up of the work of the judges, and to determine whether each of the judges, or any one of them, shall decide a case for the whole court? For instance, can laws be passed to make the decision of either judge the judgment of the whole court?

Mr. BROSNAN. Certainly. And without a law, a decision of one would be a decision, not of all the judges, but of the court.

Mr. JOHNSON. While the gentleman from Humboldt recognizes the doctrine of a united trinity, he forgets the other analogous idea, that each judge is equal to the whole court. They have co-extensive and co-equal powers, as is prescribed in the same section. But the object of the amendment was simply this, that in order to leave no room for mistake or misunderstanding, the Legislature shall have power to prescribe and define the criminal jurisdiction of each of the judges, or to declare which of them shall exercise the criminal jurisdiction of the court. I think it is sufficiently definitive of the authority of the Legislature, and the section makes the jurisdictional power of all three of the judges co-extensive and co-equal. But what I consider the material defect of the system is this: that it is not really one court, and therefore it is a misnomer to designate it the District Court of the First Judicial District, when in fact we provide for three distinct District Courts, and they should have been so named. I see no objection, however, to the amendment, by which the authority of the judges will be rendered more specifically understood.

Mr. CHAPIN. I would like to see a further slight change made in that paragraph, of a single word only. It says the Legislature may "provide by law for an alteration," etc. That, it seems to me, would limit the Legislature to one single alteration, and I suggest that it be made to read, "may provide by law for alterations in the boundaries or divisions of the districts herein prescribed, or otherwise." Then the Legislature certainly would not be limited to one alteration, and I think it would read a little better.

Mr. JOHNSON. There is also one other matter to which I wish to call attention at this time. It will be observed, in the first part of the section, that a two-thirds vote of all the members elected is required either to increase or diminish the number of districts, or the judges thereof. Now I submit whether any such innovation is to be regarded as desirable in this matter—whether the Legislature ought not to have the same power in the passage of a law on this subject, as in the passage of other laws? That is to say, whether the Legislature should not have authority to pass such a law by a majority vote, instead of requiring a vote of two-thirds of all the members elected. Why should we not have it read "the Legislature may provide by law?" Is there any good reason for taking this out of the general scope of the enactment of laws by the Legislature, when we have required, for the passage of any law, the affirmative vote of a majority of all the members elected to each branch?

Mr. DUNNE. I am very much in favor of that suggestion. I noticed the exception made when the section was first read, and would have called attention to it, but that I supposed it had been sufficiently considered, and deliberately determined on by the Judiciary Committee.

Mr. JOHNSON. I will make a motion to strike out so much as requires a two-thirds vote, so that it will read—"The Legislature may provide by law." I understand, however,

that the gentleman from Storey (Mr. Brosnan) is preparing an amendment which will probably cover the objection, and I will withdraw my amendment, at least for the present.

Mr. PROCTOR. I am in favor of such an amendment, and should have proposed it myself, only I was afraid it might conflict with some other provision.

Mr. JOHNSON. It certainly does not.

Mr. PROCTOR. I really see no reason why it should be necessary to require more than a two-thirds vote for the passage of such a law.

Mr. CHAPIN. I hope the amendment suggested will be carried unanimously, for under some circumstances it might be exceedingly difficult to obtain a two-thirds vote, however desirable the change proposed might be. We have had here, for a long time, no such number present as would constitute two-thirds of our Convention. In Storey County particularly, keeping that county especially in view, the time may not be far distant when two District Judges will be generally conceded to be sufficient, and the third one, very naturally feeling unpleasant about being thrown overboard, would of course do what he could to prevent it, by using his influence with members of the Legislature.

Mr. JOHNSON. The gentleman will observe that the provision cannot affect the right of a person after he has been elected. The only possible instance in which it could affect an incumbent, would be where he can foresee his own reelection. In that case it might affect him, but he cannot be thrown overboard, as the gentleman suggests, after he has been elected, because it is expressly stated that no such change shall take effect, except in case of a vacancy, or the expiration of the term of the office. If a term is about to expire, or a vacancy had occurred, before any election takes place, the Legislature may declare the office vacant, but nothing can be done to affect the incumbency of a judge, after his election.

Mr. CHAPIN. But even looking at the matter in that point of view, it is so easy for an interested party to prevent a change, that I hope the amendment will be made.

Mr. BANKS. I hope it will prevail.

Mr. BROSNAN. I suppose this amendment will cover all the suggestions that have been made. I will move to strike out the words "by a vote of two-thirds of all the members elected to each branch thereof," and also the words "or otherwise," and insert other words in lieu thereof, so that the clause will read as follows:

"The Legislature may, however, provide by law, for alterations of the boundaries or divisions of the districts herein prescribed, and also, for increasing or diminishing the number of the Judicial Districts and judges therein."

The amendment was agreed to by unanimous consent.

Mr. BANKS. I do not like to take so active a part in a matter that would seem to be almost exclusively the business of lawyers, and yet I do feel that we have got this section into a position that does not admit of a clear understanding of it by laymen like myself. Now the suggestion of having three courts in Storey County, made by the gentleman from Ormsby, (Mr. Johnson,) I think is a very wise one. The principal objections, as I understand, that are urged against that proposition, are these, that if there be three courts they will find great difficulty in dividing up the county so as to have the proper proportion of business in each district; that they cannot well divide the property, consisting to a great extent of interests in mining claims, and so on—matters which are so difficult to adjust. And further, it is said that if we provide for but one district and three courts, an arrangement like that of the Fourth and Twelfth District Courts in San Francisco, with which many of us are familiar, then the most popular judge will be likely to secure the greater portion of the business, while the others will have but little to do; and again, that under such a system the plaintiff would have his choice of courts. Now, sir, I recognize the fact that those objections are material, but in fixing upon the system of this court, we have established the singular anomaly of one court consisting of three judges, and each of those judges somehow having the power of the whole court. That seems to be the interpretation put upon the provision generally, by members of the Convention, and I do not know that there can be any other, under that system. I wish simply to make it clear that that, and no other, is the system for which we have provided, and therefore I submit the following as an amendment to this section:

"The business of said court shall be divided, by rule, among the judges thereof, and the decisions of each judge, upon the business assigned to him, shall be the decisions of said First District Court."

I merely offer that for the consideration of the Convention.

Mr. JOHNSON. If I thought the amendment proposed by the gentleman from Humboldt would meet the difficulties which have occurred to my mind, on the discussion of the subject, and at other times when I have had it under consideration, I would cheerfully vote for it; but I really do not think it will aid the matter in the least. I say again, that I think the material error consists in designating this as one district, having three judges, with co-extensive and co-equal powers. It is an anomaly in a judicial system, unlike anything I have ever before seen or read of.

Mr. BANKS. I concur fully in that.

Mr. JOHNSON. I think the trouble lies deeper than the gentleman's amendment would reach. After having adopted such provisions as are contained in this article, as to the power and jurisdiction of the judges of this court, declaring that their power and authority shall be co-extensive and co-equal, one with the other, in my opinion these latter words, which the

gentleman from Humboldt proposes, would only be surplusage. The difficulty, I apprehend, will be found in the practical working of the system, and I do not think an amendment, such as he proposes, would be practical. I am free to say that the only effectual remedy I can think of would be to divide the court into first, second, and third districts, the judges to be elected by the people at large; although, as I had occasion to suggest, once at least, during the session of the Judiciary Committee, a provision for two District Courts, with a geographical division of the County of Storey, and a County Court, with certain limited jurisdiction, might operate very well.

I do not make these remarks now, however, with any expectation of influencing the action of the Convention, and I certainly could not entertain such a notion at this stage, when unanimous consent is needed, in order to make any amendment. I am not endeavoring, therefore, by what I say, to influence the vote of any member respecting this feature, as the time for argument is past. Yet, although I am sure it is too late an hour for argument to have any effect in changing the minds of members, I simply desire to say this, that in my judgment neither this amendment, nor a whole batch of amendments, such as might be wrought in the way of detail, and explanatory declarations, would suffice to cure the defects of the system. One or two amendments might have been adopted, at an earlier stage, which I think would have been efficacious, and might have rendered the system one of great practical advantage, so far as Storey County is concerned.

It does not affect me personally, however, for I have no cases, either as attorney or litigant, in the Storey County District Court, and God knows I hope I never will have. But I speak from experience, not of a few years merely, in the profession of the law, experience in the reading of law, and practice in the courts, and I may add, without arrogating any superior knowledge, an experience not limited to the ordinary walks of the profession, in respect to the practical workings of the judicial systems of other States, and as the result of such experience and observation, I repeat that, in my judgment, there were one or two amendments which would have been effective in the formation of an excellent and entirely practicable judicial system, so far as relates to Storey County. The first of these amendments, I think, should have been the one which I have already mentioned, providing for a geographical division of the county into two districts, with two District Judges, with a County Court having intervening jurisdiction between that of the Justices' and District Courts. The second amendment, or rather standing second in order of arrangement, the Convention having determined to dispense with the County Court, should have been to provide for three District Judges, to be elected from the county at large, and their several courts, to be designated by districts, numerically, or by such other term as would be sufficient to distinguish one from the other. Either of these amendments, I think, would have been effectual in relieving the matter of all complication. But a majority of the Convention, including a majority of those gentlemen who so ably and fitly represent the County of Storey in this body, has failed to perceive, or, at least, has not concurred with my views, and we have now reached that stage in the consideration of the subject wherein amendments can only be made by unanimous vote.

The amendment which has been adopted on the motion of the gentleman from Storey, (Mr. Brosnan,) I think was a desirable one, because, although it does not fully remove the objections to which I have adverted, yet it renders more certain what the Convention actually means; but I really cannot regard the amendment proposed by the gentleman from Humboldt (Mr. Banks) as material or necessary, nor as adding any force or effect to the section, when it is understood from the language already contained in the section that those judges shall have co-extensive and co-equal powers, and therefore it is not necessary to repeat it—and in language, also, that may not so definitely express this meaning. The amendment does not strengthen or give force to the Constitution, or to the views of members, and hence, although I would cheerfully support it, if I could see in what way it would be of any essential benefit, I am reluctantly compelled to withhold from it my sanction.

Mr. BROSNAN. I regret that my friend from Humboldt (Mr. Banks) does not see that there is any propriety in having but one court in Storey County. Why should there be any hesitation in adopting a system similar to that of other States? For instance, the Constitution of New York, adopted in 1846, gives the City of New York one Judicial District, with one Supreme Court, as it is called, and four judges, the organization being the same as in the other districts in the State, some of which embrace nine, ten, or eleven counties. In the country, the judges travel around in their districts, each holding court in his own circuit, but in the City of New York they have no circuits, but simply divide up the business among the judges, each doing his proportion, precisely as it is proposed shall be done in Storey County. The Constitution does not even define or prescribe the manner in which they shall do business, but simply says the Legislature may prescribe such rules as are necessary. This is the provision:

"SEC. 4. The State shall be divided into eight Judicial Districts, of which the City of New York shall be one; the others to be divided by county lines, and to be compact and equal in population as nearly as may be. There shall be four Justices of the Supreme Court in each district, and as many more in the district composed of the City of New York as may, from time to time, be authorized by law," etc.

They find no difficulty in that State under

such a system. The judges make their arrangements among themselves, going out into the different counties, or, as in New York, dividing and apportioning the calendar, and holding their four separate courts. If they can do this in New York City, why can we not do the same in Storey County, which is not as large? I can perceive no difficulty in the way, and if I apprehended any, I would certainly endeavor to accommodate my views to those of other gentlemen, so as to avoid it.

Mr. BANKS. In New York, is there not an appeal from either one of those judges, to the whole court?

Mr. BROSNAN. There is an appeal from any one of the judges, to the Supreme Court of the district.

Mr. JOHNSON. The inquiry was, as I understood, whether there was not an appeal from any one of the four judges to the other three.

Mr. BANKS. That is my question. I ask if there is not an appeal from each judge to the whole?

Mr. BROSNAN. I say there is an appeal from each judge to the Supreme Court of the district.

Mr. JOHNSON. I am quite sure that the gentleman from Storey does not understand the question, nor the gentleman from Humboldt the answer.

Mr. BANKS. I inquire whether, under the system prevailing in New York, as stated by the gentleman from Storey, there is not an appeal from any one of those judges to the other members of the court?

Mr. BROSNAN. There is an appeal from the individual judge to the court, composed of four judges, the judge whose decision is appealed from, however, not taking part in the consideration of the appeal.

Mr. BANKS. The system there differs, in that respect, then, from the one proposed for Storey County, because here we provide for no appeal from one judge to the whole three.

Mr. BROSNAN. That is the precise difference, and it simplifies our course of proceeding. Here an appeal from each one of the judges goes directly to the Supreme Court, instead of, as in New York, to the District Judges sitting in bank, and from them, by a second appeal, to the Court of Appeals, which is the court of last resort in that State. There, an appeal goes, in the first place, to the Judges of the District Court, who constitute the Supreme Court of the district, composed of the four judges, sitting at general term; then from that court there is a further appeal to the Court of Appeals, the court of final resort. The difference here is, that there is no appeal from the individual District Judge to his coördinate judges, which avoids the necessity of two appeals.

Mr. BANKS. The delegates from Storey seem to be unanimously in favor of the section as it is. They have utterly failed to convince me that the section is well enough as it stands, or that an amendment of this nature is unnecessary, but in deference to them, and purely in deference to them, I withdraw the amendment.

Mr. BROSNAN. So far as I know, the members of the bar of Storey County have no hesitation whatever about this matter.

JURISDICTION OF DISTRICT COURTS.

Section 6 was read, as follows:

SEC. 6. The District Courts in the several Judicial Districts of this State, shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title, or the right of possession to, or the possession of real property, or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, (exclusive of interest,) or the value of the property in controversy, exceeds three hundred dollars; also, in all cases relating to the estates of deceased persons, and the persons and estates of minors and insane persons, and of the action of forcible entry and unlawful detainer, and also, in all criminal cases, not otherwise provided for in this Constitution, under such regulations as may be prescribed by law. They shall also have appellate jurisdiction in cases arising in Justices' Courts, and such other inferior tribunals as the Legislature may provide. The District Courts and their judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs necessary to the complete exercise of their jurisdiction; and also, shall have power to issue writs of habeas corpus, on petition by or on behalf of any person held in actual custody in their respective districts.

Mr. JOHNSON. I will submit to the Chairman of the Judiciary Committee whether there should not be an amendment of the language of that clause which reads—"and also in all criminal cases not otherwise provided for in this Constitution, under such regulations as may be prescribed by law?"

Mr. BROSNAN. That is not right, and I have an amendment to offer. Those words were used with a view to harmonizing with the jurisdiction proposed to be given to the County Court in Storey County, and the Convention having determined to abolish that court, they are rendered superfluous. I will move to amend by striking out the words "in this Constitution, under such regulations as may be prescribed." Then the clause will read, "and also in all criminal cases not otherwise provided for by law." That will be in conformity with the section intended to give certain criminal jurisdiction to Justices of the Peace.

Mr. JOHNSON. There is this difficulty, however, that these courts must be organized before the Legislature will convene, and consequently prior to the time when their jurisdiction can be defined by law. What disposition is to be made, in the meantime, of the jurisdiction hitherto exercised by the Probate Courts?

Mr. BROSNAN. The Probate Courts will continue to exercise the same jurisdiction they now have, until they are superseded.

Mr. JOHNSON. But after they are superseded?

Mr. BROSNAN. All their jurisdiction necessarily devolves upon the District Courts, as soon as they are organized.

Mr. JOHNSON. Under what rule?

Mr. BROSNAN. Under the general rule of the common law. In the first place, they have inherently jurisdiction in all cases of equity and law, and then they have criminal jurisdiction. In fact, they have all the jurisdiction that belongs to the Court of King's Bench in England.

Mr. JOHNSON. In reply, let me say, in the first place, that we propose to define the jurisdiction of these courts, and consequently they become creations, not by virtue of the common law, but by force of the constitutional provision. Hence it is necessary to define their jurisdiction specifically, for as a lawyer, I do not hesitate to affirm that they cannot exercise any jurisdiction independent of that which is conferred by the Constitution itself, unless the language of the Constitution be sufficient to embrace it by implication. Now, in this section we give the District Courts, in the first place, jurisdiction in civil cases; then we declare that they shall also have jurisdiction "in all criminal cases not otherwise provided for by law." Now the question arises, what criminal cases are provided for by law, and gentlemen will remember that the territorial laws are to be continued in force until repealed or amended by the Legislature. For instance, there are the appealable cases from the Justices of the Peace, which at present are transmitted to the Probate Courts; what becomes of that jurisdiction, until the Legislature shall make provision defining the jurisdiction of the courts? After the Probate Court is abolished, and until the Legislature shall have provided for the matter, what court can entertain jurisdiction in the class of cases last named?

Mr. BROSNAN. I am not aware that the Probate Courts have any criminal jurisdiction.

Mr. JOHNSON. Yes, sir, they have. There is appellate jurisdiction in Probate Courts over cases arising in the Justices' Courts. All cases which are triable by Justices of the Peace, are appealable to the Probate Courts.

Mr. BROSNAN. On questions of law alone, or questions of fact, also?

Mr. JOHNSON. On questions of law alone.

Mr. BROSNAN. Well, my idea is this: The District Courts have primary jurisdiction in all matters, no matter what the amount involved, if they be cases in equity or at law, or criminal cases. Then, when you come to divide up that jurisdiction between the District Court and the others which you have established, all that you do not impart to the other courts, whether inferior or superior to the District Court, of course it retains, from the nature of its original character, having comprehension enough to embrace every species of case generally characterised as law case, equity case, or criminal case. That is to say, the District Court retains all the jurisdiction that you do not take from it and give to another court, so that it would still have jurisdiction in all general cases of that description, except what you may have given to Justices of the Peace, in cases of a criminal nature.

Mr. JOHNSON. This is the point I make. Territorial laws being in force, as they will continue to be, until repealed or altered, the Probate Courts are by law invested with this jurisdiction. Now, under this provision, therefore, it is quite apparent to me that the District Courts could not exercise criminal jurisdiction, for the reason that the laws have conferred it upon the Probate Courts. Then, advancing a step, we find that the time arrives when the Probate Courts, so invested by the laws of the Territory, with certain jurisdiction, the exercise of which is inhibited to the District Courts, are abolished. Now can we conclude, when that event takes place, that the District Courts are so far the residuary legatees of the Probate Courts, that they at once become invested with that jurisdiction? If you reply "yes," then I must respectfully dissent, because the constitutional provision continuing in force the territorial laws has invested another court with that jurisdiction. Therefore the criminal jurisdiction, exercised hitherto, and until, say, the first Monday of December next, by the Probate Courts, cannot be exercised by those courts after that time, for they will have ceased to exist.

Mr. BROSNAN. I understand that among the miscellaneous matters contained in the Schedule, is a provision that all criminal proceedings which are in progress in any of the courts of the Territory shall be continued and transferred to the courts having jurisdiction under the State organization. We also provide that the courts and judicial officers shall not be superseded until the State Courts go into operation. I take it, therefore, that the County or Probate Courts will be in existence until the District Courts are organized and established, so that the jurisdiction of the County Courts will not be disturbed until they go out of existence, and that moment the District Courts will have absorbed, if I may use the expression, their natural inherent jurisdiction, which has been taken from them and given to the County Courts by the Territorial laws. They take to themselves again all that jurisdiction which has been conveyed to the County Courts by the territorial laws, under and in virtue of the transfer which is provided for in the Schedule; for it is there declared that all prosecutions, no matter for whatever cause, and all suits of any kind that may have been commenced, no matter how far they may have advanced, if they are not completed, shall go to the court having jurisdiction of the subject matter thereof, and may be continued and prosecuted to final judgment and execution.

Mr. JOHNSON. Here is the point. The case is sent to the court having jurisdiction of the subject matter involved. What court? You respond "the District Court." But I inquire by virtue of what authority? You point to this section declaring that the District Court shall have jurisdiction in all cases not otherwise provided for by law, and then I meet your answer by saying that the Territorial laws, still in force,

have not invested the District Court with any such jurisdiction, but that, on the contrary, another court is invested with it. Therefore it is necessary to provide that the District Courts shall succeed to the jurisdiction of the Probate Courts.

Now this section of the Schedule provides, as the gentleman truly says, that all records and all cases pending shall be transferred to the State Courts. Admit it; but what does the transfer amount to, in any case, unless the Court is invested with authority to try and determine? It is a mere nullity in itself. The records may be transferred, but we may fail, by an oversight or otherwise, to invest the court to which they are transferred with the necessary power and authority to try those cases which are appealed from Justices' to Probate Courts, and there entered of record.

Mr. BROSNAN. Suppose there is a civil case in Storey County involving an amount of four or five hundred dollars, pending, though undetermined, when these District Courts go into operation under the Constitution; what becomes of that case? How is it to be determined?

Mr. JOHNSON. I will answer very readily. No trouble can arise in such a case, because the District Courts have jurisdiction, specifically conferred under this article, in all cases of law and equity, where the amount exceeds three hundred dollars. Consequently in the case stated, there is no difficulty.

Mr. BROSNAN. I think we are getting nearer to understanding each other. I will ask now, suppose it is a case brought on appeal, where the amount is under two hundred dollars?

Mr. JOHNSON. I think we will have to supply some additional words here which will cover that case, or it will be very doubtful if any court will have jurisdiction — exceedingly doubtful. If you limit the jurisdiction of the District Courts to a given sum, unless there be a further provision investing the District Courts with authority to try all cases, civil and criminal, that may be existing in the Probate Courts, irrespective of the amount, I will not say that I question the authority of any Court, but I hold, without hesitation, that there is no court which would have any jurisdiction over such an action, and it must die with the former Court, in a way similar to that which occurred when the Territory of Nevada was created. We had at that time the judicial district of the County of Carson, and no provision was made for the transfer of cases involving these small amounts. Some of the records existed, but there was no provision for their transfer, and the records were claimed as private property, and were retained by the clerk of the Court. Those cases therefore died with the Court, and no attempt was made to resist or prevent that result, for the simple reason that there was no power to prevent it. I take it to be the opinion of the entire body of the lawyers of the Territory that in that instance no power could interpose its authority.

We shall meet with the same difficulty now, unless we make proper provision for a transfer of such jurisdiction. Those cases cannot be transmitted to the Justices' Courts from which they have passed, because such courts are the successors of the Territorial Justices' Courts, with increased jurisdiction. They are placed beyond the power of the Justices' Courts, and for that reason they are beneath the authority of the District Courts, because we have not enacted that the jurisdiction of the District Courts shall embrace this class of cases, but, on the contrary, have thrown them without that jurisdiction.

I am pleased that the gentleman from Storey has asked these questions, for the thought as to the want of jurisdiction in this class of cases had not occurred to my mind, as I was thinking only, in the first place, about the criminal jurisdiction, and these questions have suggested the necessity of adopting an amendment to provide that all cases, civil and criminal, pending in the Probate Courts at the time when they are abolished, shall be transferred to and tried by the District Courts.

Mr. BROSNAN. I am very glad this discussion has arisen, because, during its progress, there has been brought out an important matter, in which I think the gentleman from Ormsby is precisely right. I do not yield my position, however, in regard to criminal proceedings, but I say that in discussing the matter of civil cases, wherein the jurisdiction of the District Court is limited, the fact has been made manifest that there is a vacuum which must be filled. In criminal cases, as I said before, there is, in my judgment, no necessity for any further provision, because there is no limitation of the District Courts whatever upon that subject. There is nothing to take away the jurisdiction of any specific criminal cases from them, but the whole body of the criminal law is within their grasp. We have merely provided that Justices of the Peace may have concurrent jurisdiction with the District Courts conferred upon them by law, in certain criminal cases, so that, in my judgment, (and I speak on that subject with great respect and deference for the opinion of the gentleman from Ormsby,) the District Courts have full jurisdiction over all those cases.

In regard, however, to those civil cases, which occurred to me while the gentleman from Ormsby was speaking, I saw that there was a vacuum which ought to be filled, and the reason of that is, that we have limited the jurisdiction of the District Courts, so that if a case were pending before a County Court, and that court should be superseded before its determination, the amount involved being less than that over which we have given jurisdiction to the District Courts, of course it would have to fall through, there being no court having jurisdiction of the case. Hence, I think it is fortu-

unless that we have entered upon this discussion.

Mr. JOHNSON. I am preparing an amendment.

Mr. BROSNAN. Probably the Schedule will be the proper place for it.

Mr. JOHNSON. I will prepare an amendment to the Schedule, then, which I will submit at a proper time.

The question was taken on the amendment proposed by Mr. Brosnan, to strike out the words "in this Constitution, under such regulations as may be prescribed," and it was unanimously agreed to.

Mr. BROSNAN. I now move to insert, in the next following clause, the word "final," before the words "appellate jurisdiction," so that it will read—"They shall also have *final* jurisdiction in cases arising in Justices' Courts," etc.

The amendment was agreed to by unanimous consent.

Mr. BROSNAN. In the next clause, after the words "all other writs," I move to insert the words "proper and," so as to read—"and all other writs proper and necessary to the complete exercise of their jurisdiction."

The amendment was agreed to by unanimous consent.

Mr. BANKS. We have now provided, I think properly, that the District Courts shall have final appellate jurisdiction, and that, as I understand, covers not only Justices' Courts, but also all other inferior courts which may be established by the Legislature.

Mr. BROSNAN. That is right. The word "final" covers both.

TERMS OF COURTS.

Section 7 was read, as follows:

SEC. 7. The times of holding the Supreme Court and District Courts shall be as fixed by law. The terms of the Supreme Court shall be held at the seat of government, and the terms of the District Courts shall be held at the county seats of their respective counties.

Mr. BROSNAN. The latter clause is an addition to the report, as gentlemen will remember.

Mr. FRISELL. I would like to call the attention of members of the Judiciary Committee to the last clause in this section, providing that the terms of the District Courts shall be held at the county seats of their respective counties. Gentlemen will recollect that Section 5 gives power to the Legislature to make alterations or divisions in the Judicial Districts, but in case the Legislature, in the exercise of its wisdom and discretion, should see fit to make such alteration or division of any district, there might arise an impossibility, because it would of course be impossible, if a county should be divided into two districts, to hold both courts at the county seat. It seems to me there should be an amendment providing that in such a case one of the District Courts may be held elsewhere than at the county seat. I merely call the attention of the committee to that subject.

Mr. BROSNAN. I do not perceive any danger of inconvenience to result on that account. When a power is given expressly, all further power is given by implication that may be necessary to carry out the intent, and to give full and beneficial scope to the power which is expressed. I take it that the power to which my colleague (Mr. Frisell) refers, may be implied, from the language which is here expressed. When the Legislature is empowered to alter, they are not thereby authorized to destroy. In order to carry out the intention of the power expressly conferred, the Legislature might determine that some other place than the county seat would be more suitable for holding the terms of the District Court, in the new district, and might provide by law for holding the court in that place. But, at any rate, there can be no more appropriate place, generally, for holding the terms of court, than at the county seat, where all the records are necessarily kept. I cannot see that any injury or inconvenience is likely to result from leaving the section as it is.

Mr. BANKS. A county might be divided—

Mr. JOHNSON. If the gentleman from Humboldt will allow me—I think I understand what he is driving at—I will offer an amendment, providing that in case any county shall be divided into two or more Judicial Districts, the Legislature shall have power to provide by law the places of holding the terms of such courts. I will submit that amendment to the Chairman of the Judiciary Committee.

Mr. BROSNAN. I see no objection to the amendment, and will offer it. I move to amend Section 7, by adding thereto the following words:

"*Provided*, That in case any county shall be hereafter divided into two or more districts, the Legislature may by law provide the places of holding such courts."

The amendment was agreed to by unanimous consent.

Mr. BANKS. I rise to make a suggestion for the benefit of the gentleman from Storey, (Mr. Frisell,) namely, that the moon seems to have changed. [Merriment.]

Mr. CHAPIN. There is one further alteration which I would like to see made in Section 7. Litigants are usually bled to death, as we all too well know who have unfortunately been into the courts, and it does seem to me that a time may come hereafter when it will be very desirable to have a term of the Supreme Court held occasionally in Storey County, where we have two or three District Courts, full to overrunning with business, and from fifty to a hundred lawyers constantly engaged in them. The larger law libraries are all located there, and by having the Supreme Court Judges come there once in a while and hold court, immense amounts could be saved simply by saving the

cost of preparing transcripts of records. The testimony, and all the other voluminous records, now have to be brought down here, when a case is appealed, and it seems to me that the saving would be enormous by having the terms of the Supreme Court held there once in a while. I therefore move to amend the section by inserting after "at the seat of government," the words "unless otherwise provided by law." Then in case it shall hereafter appear necessary to have a term of the court held occasionally at some other place than the capital, it can be accomplished.

Mr. McCLINTON. I am opposed to this proposition, and I believe the amendment requires unanimous consent.

The PRESIDENT *pro tem.* Yes, sir.

Mr. McCLINTON. Very well; I enter my protest against it, and for the reason that it makes an invidious distinction in favor of Storey County. I do not see why I might not just as well ask the same thing for Esmeralda County. It is true, she is not at present in the same position, but I believe she will have quite as many cases, in proportion to her wealth, in the Supreme Court.

Mr. CHAPIN. I beg leave to explain. My amendment leaves it open, and makes no invidious distinction, either in favor of Storey or any other county, although I had Storey County particularly in view.

Mr. McCLINTON. It is well understood that the amendment is intended for the advantage of Storey County, and I have Esmeralda particularly in view.

Mr. JOHNSON. There is one objection to that amendment, to which I wish to call the gentleman's attention particularly. We have already provided that the office of the Clerk of the Supreme Court shall be fixed at the capital, and it is impossible to have the term of the court held at one place whilst the court is in another. And again, the gentleman must understand, as certainly every lawyer knows, that it is impossible for the Supreme Court to determine a cause, without having the record before it; and the fact of the court's sitting in Storey County, or Esmeralda County, would not obviate the necessity of having a transcript of the record prepared in each case.

Then there is another objection to having the Supreme Court traveling about the country instead of being permanently fixed in one place, and that is, if there are any good reasons why it should be allowed occasionally to hold its sessions in Storey County, there are the like reasons why it should be held in Esmeralda, Humboldt, and Lander Counties. And the argument of the convenience of counsel and parties litigant would have more especial weight in reference to those more remote counties, because a journey of a single hour will suffice to bring parties or records from Storey County here, whereas communication from those distant counties requires days. The argument in favor of compelling the court to hold sessions in those more remote counties would therefore be much more forcible than that in favor of sending it to Storey County.

If we enlarge and carry out the principle of accommodation proposed by the gentleman from Storey, so as to allow the Supreme Court to hold sessions in the remote counties, for the convenience of parties, we shall provide such a system as will utterly preclude the Supreme Court from ever getting through with its business. We shall thereby be converting the Supreme Court, as I said in the former Convention, into a traveling menagerie, sending it to Esmeralda County, and Nye, and Lander, and Humboldt, and elsewhere through the Territory, where cases may arise, occupying probably half the time of the Court in traveling, to say nothing of the additional expense to which it would subject the members of the Court; an expense so great that no reasonable amount of salary would compensate for it, whilst such an arrangement would save but a trifling amount of expense to litigants.

Mr. PARKER. I rise to a point of order. I am perfectly willing to hear gentlemen talk about a matter which is before the Convention, but this amendment requires unanimous consent, and objection being made, there is consequently no question before the Convention. For one, I do not want to sit here and listen to a useless discussion.

The PRESIDENT *pro tem.* The Chair thinks the point of order is well taken.

Mr. JOHNSON. I submit that the point of order is not well taken, as the only way you can properly ascertain whether or not there is objection to the amendment is to put it to the vote. I do protest against a ruling that places it out of the power of the Convention to discuss an important question like this.

Mr. CHAPIN. I now move to refer Section 7 to a select committee of three, with instructions to amend by inserting the language which I have proposed, namely, to insert after "seat of government," the words, "unless otherwise provided by law."

Before that motion is put, Mr. President, I want to occupy about two minutes of the time of the Convention, and probably I will not consume more time than that upon this subject. I do regard it as very impolitic indeed for us to tie up, by a constitutional provision, the action of our Legislature in matters of this kind. We know not the amount of legal business which may spring up hereafter, in Esmeralda, Humboldt, or Storey County, and in the latter county we know that it is already excessively large. At the present time I venture to say that more than three-fourths of all the cases that are to come before the Supreme Court for trial and adjudication will come from that county. And the time may not be far distant when the same state of things will exist in some other portion of the State. Now I ask, is it wise to put into the fundamental law such a provision, which there will be no power in the

Legislature to alter, or in any respect to modify or change, although they might see fit, in their wisdom, to make some other provision? I would be glad, if it were in my judgment consistent with the interests of the people, to have the Supreme Court remain here permanently; but I do not want the thing bound down in such a way as to be utterly irrevocable. I hope there may be no occasion for change, but I trust we shall not prevent the possibility of change in the event that occasion for it shall arise.

Mr. JOHNSON. I have presented to me the possibility of being ruled out of order, but I shall endeavor in what remarks I have to offer to keep within the rules of order. I wish to repeat in part what I before said on this question, and it may be add a word or two more.

This proposition, as I regard it, is but a standing bid to the Legislature to constitute a court of the peripatetic character to which I have referred. But it would be found utterly impracticable to provide for holding a court elsewhere than where the records are kept, so that they, too, would have to follow the judges around the country, at great expense. It would constitute no saving, and no advantage in the world to the public, whilst the litigants themselves, and the members of the court, would be greatly inconvenienced by such an arrangement. If we place it in the power of the Legislature to impose such laborious duties on the judges, it will necessarily involve an increase of their salaries, for if a term is established in one county, another will have to be provided for in another county, and so on in turn till every inconsiderable town in the State shall have been accommodated with the presence of this wandering court. The consequence will be that most of the time of the court, and the entire salary of the judges, will be absorbed in traveling from place to place.

Mr. MCCLINTON. I hope this section will not be referred to a special committee, with the instructions proposed by the gentleman from Storey, (Mr. Chapin,) for the reasons which have been urged by the gentleman from Ormsby, (Mr. Johnson,) and for another reason, which is, that the lawyers and litigants who may have business to come before the Supreme Court, are the parties whom we certainly ought to require to wait upon the Supreme Court, rather than make the Supreme Court wait upon them, at their own doors. That would be an infringement upon the dignity of the court. I do not want to see so dignified a body as the Supreme Court of the State of Nevada made by a constitutional provision nothing better than a band of Gypsies or nomads, wandering about to every county seat in the State, in some of which the population may not exceed two or three hundred persons. I say if parties litigant have cases to try, let them bring those cases to the court and have them there tried, and do not let them ask that the court shall be brought to them.

Mr. TAGLIABUE. I rise to a question of order. I do not think there is a quorum present. The Convention is looking very thin.

The PRESIDENT *pro tem.* The Secretary will count the Convention.

The SECRETARY reported that twenty-one member were present.

The question was taken on the motion of Mr. Chapin to recommit Section 7, with instructions to amend, and it was not agreed to.

JUSTICES' COURTS.

Section 8 was read, as follows:

SEC. 8. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and shall fix by law their powers, duties, and responsibilities; provided, that such Justices' Courts shall not have jurisdiction of the following cases, viz.: First—Of cases in which the matter in dispute is a money demand or personal property, and the amount of the demand, (exclusive of interest,) or the value of the property, exceeds three hundred dollars. Second—Of cases wherein the title to real estate or mining claims, or questions of boundaries to land, is or may be involved; or of cases that in any manner shall conflict with the jurisdiction of the several Courts of Record in this State: *And provided further*, that Justices' Courts shall have such criminal jurisdiction as may be prescribed by law. And the Legislature may confer upon said courts jurisdiction concurrent with the District Courts of actions to enforce mechanics' liens, wherein the amount (exclusive of interest) does not exceed three hundred dollars; and also of actions for the possession of lands and tenements, where the relation of landlord and tenant exists, or when such possession has been unlawfully or fraudulently obtained or withheld. The Legislature shall also prescribe the manner and determine the cases in which appeals may be taken from Justices' and other courts. The Supreme Court, the District Court, and such other courts as the Legislature shall designate, shall be Courts of Record.

Mr. BANKS. I move to amend the last proviso by inserting after "concurrent," the words "or exclusive," so that it will provide that the Legislature may confer concurrent or exclusive jurisdiction. I would like to hear exactly how it will read then.

Mr. JOHNSON. Very badly.

The SECRETARY. The clause will read, if so amended, "and the Legislature may confer upon said courts jurisdiction concurrent or exclusive with the District Courts, of actions to enforce mechanics' liens," etc.

Mr. BANKS. Well, I will move to amend it, then, so that it will read—"and the Legislature may confer upon said courts exclusive jurisdiction, or jurisdiction concurrent with the District Courts," etc.

My object in proposing such an amendment, is to give the Legislature power, in its discretion, to confer upon Justices of the Peace exclusive jurisdiction in those small cases. If the section shall be adopted without an amendment of this character, the result will be, the District Courts having jurisdiction in such cases, as well as the Justices' Courts, that a wealthy plaintiff will have the power to bring his suit in the higher court, subjecting the defendant, who, perhaps, may be a poor man, to greater expenses than he can bear, and thus depriving him of the power to obtain justice. I do not wish to put such a power in the hands

of the wealthy plaintiff, and hence I desire that, at the least, the Legislature may have the power to determine that Justices of the Peace shall exercise exclusive jurisdiction in these cases.

Mr. BROSNAN. To what particular cases does the gentleman from Humboldt refer?

Mr. BANKS. Those cases which are enumerated in the amendment adopted on the motion of the gentleman from Storey — mechanics' liens, and so on.

Mr. BROSNAN. I take it that the gentleman's object is already secured by the previous action of the Convention. Justices' Courts have jurisdiction in any case amounting to less than three hundred dollars, and of course there being no intermediate courts, that is, between the District and Justices' Courts, that jurisdiction must always remain with them. The word concurrent has been employed here, because mechanics' liens are subjects of equity jurisprudence. All liens of every description are within the reach of equity jurisprudence, and that fact would give to a District Court jurisdiction as to any amount, whilst Justices of the Peace cannot exercise jurisdiction over the matter inasmuch as they are mere creatures of statute, and have no original powers. As the section now stands, however, Justices of the Peace are given co-extensive jurisdiction, or concurrent jurisdiction, which amounts to about the same thing, in these cases of the enforcement of liens, where the amount does not exceed three hundred dollars, exclusive of interest; and I do not not see any object which the gentleman from Humboldt could have, or any benefit that could accrue by shutting out the District Courts from that jurisdiction.

I understood the gentleman to raise the objection that a wealthy man would be able to force a poor man into the higher court, but I do not see how it could operate in that way. In the first place, it is the poor man, the mechanic, who has his lien, and he has his option as to the court in which he shall bring his suit. The mechanic selects his own court, having the privilege of going into either the District Court or a Justice's Court. How, then, is he injured, when he may select for himself in which court he will bring his suit? And is the interest of any other person prejudiced because the mechanic has a right to go into either court? Or is the mechanic going to be injured because another person has the right to go into the District Court, in these special cases? I think not, and therefore it appears to me that everything the gentleman from Humboldt seeks is already provided for, in the section as it has been amended. I drew the amendment yesterday, with a great deal of care, in order to meet this very character of objections.

Mr. BANKS. I ask that the entire section be read again.

The SECRETARY again read Section 8.

[The PRESIDENT in the chair.]

Mr. CHAPIN. As the time for the recess has nearly arrived, I move that it be extended for half an hour.

The question was taken, and the motion was declared to be agreed to.

Mr. WARWICK. I call for a division.

The PRESIDENT. The gentleman is too late.

Mr. WARWICK. No, sir; I think not.

The PRESIDENT. The gentleman can take an appeal, if he desires to do so.

Mr. WARWICK. I take an appeal, and my ground of appeal is that there were but two ayes, and I certainly heard a greater number of noes. I called for a division as quick as I could.

The PRESIDENT. The Chair had certainly decided the vote before there was any call for a division, but at the same time I am quite willing to allow a division to be taken.

The question was taken—"Shall the decision of the Chair stand as the judgment of the Convention?" and upon a division the vote was—ayes, 8; noes, 10. So the decision of the Chair was not sustained.

Mr. McCLINTON. Now I call for a division on the motion to extend the time.

The PRESIDENT. No, sir; that cannot be, because the decision of the Chair, which has been reversed, was that the time had been extended.

The hour of five o'clock having arrived,

The PRESIDENT declared the Convention at recess until seven o'clock, P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock, P. M., and was called to order by the President.

FINAL ENROLLMENT.

Mr. CHAPIN. Before taking up the regular business, I wish to offer a resolution in relation to the final enrollment, for the reason that there are so many members who contemplate leaving the Convention.

The PRESIDENT. We have not had more than twenty-four or twenty-five members present to-day, and it may, perhaps, be as well to inquire about how many are desirous of leaving.

Mr. CHAPIN. I have drawn this resolution with reference especially to the haste that many members will be in to get away at the close.

The SECRETARY read the resolution, as follows:

Resolved, That the President appoint a committee of three, whose duty it shall be, together with the President and Secretary of the Convention, (after the final adjournment of the Convention,) to correct any clerical errors which may have occurred, and to supervise the re-enrollment of the Constitution as finally passed; and that the last sentence in the Constitution be enrolled on a separate sheet, to be signed by the members of the Convention, and attached to the re-enrolled copy of the Constitution.

The question was taken, and the resolution was adopted.

The PRESIDENT. The Chair will be under

the necessity of appointing this committee almost entirely from the Ormsby delegation. I have made inquiries as to other members of the Convention, nearly all of whom propose to leave immediately, and the mover of the resolution himself desires not to be placed on the committee. I understand, however, that the gentleman from Storey, who is Chairman of the Judiciary Committee, (Mr. Brosnan,) will remain, and I will therefore name as the committee Messrs. Brosnan, Kinkead, and Gibson.

Mr. BANKS. What is the object of the latter portion of the resolution, providing that the last sentence shall be enrolled on a separate sheet, to be signed by the members and attached to the re-enrolled copy?

Mr. CHAPIN. So that what members are signing shall not appear a perfect blank. That is the way it was done last year.

Mr. TAGLIABUE. It is to prevent anybody from putting a note of hand, for instance, above the signatures. [Merriment.]

THE SCHEDULE.

Mr. CROSMAN, from the Committee on Engrossment, reported that that committee had carefully compared the engrossed Article XVII, (as re-numbered,) entitled Schedule, with the original article as ordered engrossed, and had found the same correctly engrossed.

The report was accepted, and the article was placed on file for a third reading.

JUDICIAL DEPARTMENT.

The Convention resumed consideration of Article VI, entitled Judicial Department, upon its third reading.

JURISDICTION OF JUSTICES OF THE PEACE.

The question pending was stated to be on the motion made by Mr. Banks, to recommit Section 8 to a special committee of three, with instructions to amend the same by inserting after the words "said courts," the words "exclusive jurisdiction, or," so that the clause would read:

"And the Legislature may confer upon said courts exclusive jurisdiction, or jurisdiction concurrent with the District Courts, of actions to enforce mechanics' liens, wherein the amount (exclusive of interest) does not exceed three hundred dollars; and also of actions for the possessions of lands and tenements, where the relation of landlord and tenant exists, or when such possession has been unlawfully or fraudulently obtained or withheld."

Mr. BANKS. It will be observed that the remarks of the gentleman from Storey (Mr. Brosnan) on this matter, seem to have been made upon the assumption that those words, "exclusive and concurrent jurisdiction," qualified only actions for the enforcement of mechanics' liens, but the reading of the section shows clearly that it qualifies not only mechanics' liens, but the other matters embraced in the amendment, which was adopted, on his motion, the other day.

One of the strongest reasons why the Legislature should, in my judgment, have the privilege of passing laws, giving to Justices of the Peace exclusive jurisdiction in such cases, I stated briefly this afternoon, previous to the remarks of the gentleman from Storey, namely, that to prohibit the Legislature from passing any laws conferring such exclusive jurisdiction, would be to place it, beyond all question, in the power of plaintiffs to bring suit wherever they please. And the argument is still unanswered, notwithstanding the attempt of the gentleman from Storey to reply to it, that it would give to the wealthy man an opportunity to bring his suit in a court where the poor man would not have an equal chance with him, on account of the very great expense of carrying on suits in the higher courts. It is manifest that there should be courts established for the trial of these cases of small amounts, where any person who is interested can be heard in defense of his title, or in advocacy of his claim, for a small sum. But while this body does not seem to be desirous of conferring this power on Justices' Courts directly, by a constitutional provision, there are some members, at least, who seem to be willing to place the matter in such a position that the Legislature cannot confer that power exclusively upon the Justices' Courts. I cannot help thinking that those gentlemen seem desirous of leaving a loop-hole open for placing the matter in such a position that the wealthy prosecutor, in that class of cases, will have an advantage over his poorer opponent.

Mr. DeLONG. But does it not cost him a great deal more to get his judgment, if he sues in the higher court unnecessarily?

Mr. BANKS. Sometimes a man cares little or nothing for the expense, if he can only bother and annoy his opponent.

Mr. DeLONG. What right has the gentleman from Humboldt to assume that such a suit will cost more in a District Court than in a Justice's Court?

Mr. BANKS. Simply because we know from experience, that it uniformly costs more to carry on a case in a Court of Record than in a Justice's Court, where any straight-forward common sense man can conduct his own case, without incurring the expense of employing a lawyer.

Mr. DeLONG. For every paper filed, the charge of the clerk is the same in a Justice's Court as in a District Court; they have the same charge in those courts for the fees of jurors, the same for swearing in jurors, and the same for administering an oath to a witness. In short, there is no difference in the world in respect to the fees. The cost in a Justice's Court of a trover case, which goes off without any trouble, is small, but if the same case were tried in a District Court, it would cost very little, if any, more. Cases in the District Courts ordinarily cost more, it is true, than cases in Justices' Courts, but that is only because they are cases of greater importance, involving more difficult questions.

Mr. BANKS. That is all special pleading. If the gentleman will allow me to the mode of expression, for he very well knows that I contend constant my own case in a District Court, because I require there the aid of a lawyer.

Mr. DeLONG. The gentleman can, in a District Court, if he can in a Justice's Court.

Mr. BANKS. The gentleman from Storey knows very well that practically men do not, and cannot do so.

Mr. BROSNAN. There is in California a special provision that every man shall be allowed to plead his own case in any court.

Mr. BANKS. That is not my recollection; but it makes no practical difference.

Mr. WETHERBEE. Here is what I regard as a strong point in favor of the amendment. Where the losing party feels aggrieved by the decision, as is frequently, if not generally the case, he naturally wishes to take an appeal; but if his case has been tried in the District Court he can only appeal to the Supreme Court, and then he does not know when it may ever be heard from again; whereas, if it is tried originally in the Justice's Court, he can take his appeal to the District Court, and he still has the case right at home, under his own observation. I look upon that as a very strong point.

Mr. BROSNAN. I hope the amendment proposed by the gentleman from Humboldt will not prevail. If it should happen to do so, we are placed in the attitude of bringing our subordinate Courts of Justice in direct opposition to, and in conflict with the jurisdiction which we have already given to our Court of Appeal, the Supreme Court; for we have determined that the Supreme Court shall have appellate jurisdiction over all subjects of controversy, wherein the amount involved is over three hundred dollars, exclusive of interest, and also wherein the title to, or the right of possession of land or mining claims is involved, no matter what the amount of the value may be. Suppose we say here that Justices' Courts shall have exclusive jurisdiction of these matters, what becomes of the rest of our Constitution?

Now, sir, I state it as a fact, that in the State of California no man is prohibited from going into any of the courts and pleading his own case; any man can do so, and it is frequently done. But men generally are wise enough—although many are not as wise as my friend from Humboldt—to trust themselves and their interests in the hands of men who are skilled in the law, and are not willing to allow them to be condemned by those who are inexperienced. If I had a job of mechanical work of any kind to perform, instead of undertaking it myself, I would go to a man who understood that particular business, and employ him to do it. And it is upon the same principle that men employ lawyers and advocates to prosecute or defend their cases in the courts, in their behalf.

I will say further, Mr. President, that Justices of the Peace in this State have, or will have, if we shall adopt a State organization, a more enlarged and extended jurisdiction than I have ever known, or heard of being conferred upon that class of officers anywhere else. It might be just as safe to intrust this jurisdiction to Justices of the Peace as to intrust it to District Judges, provided they were known to possess the legal abilities which District Judges are required to possess. But inasmuch as we cannot reasonably expect that, and inasmuch as we have already enlarged the jurisdiction of Justices of the Peace three-fold, even against the experience of the past—in opposition to the precedents of other States—I submit that we ought not now to adopt this amendment, and the more especially when we consider that it will necessarily devolve upon this Convention the duty of going back and remodeling what it has already done; and that, too, at this period of time in the progress of our deliberations, when we are scarcely able to keep a quorum together.

Mr. BANKS. I would like to be allowed about one minute to reply to some of the remarks of the gentleman from Storey.

The PRESIDENT. The gentleman has already occupied more than his allotted time.

Mr. TAGLIABUE. I object.

Mr. BANKS. The gentleman from Storey (Mr. Brosnan) has made some statements to which I would ask leave to reply, very briefly.

The question was taken on suspending the rule, so as to grant Mr. Banks leave to proceed, and leave was granted.

Mr. BANKS. The gentleman from Storey states, with a great deal of emphasis, as a matter of fact, that there is no law in California prohibiting a man, who is not a lawyer, from entering a Court of Record, and there stating his own case, or pleading his own cause, whether before a District Court or any other court. Now, sir, I did not state positively that on account of any legal prohibition a man could not enter such a court for that purpose, but I said that practically there was a denial to him of that privilege. And I do not know of a single instance, within my own observation of legal proceedings, where a man, who was not a lawyer, has gone into a Court of Record to attend to his own case, while I have known of many instances, in the less formal courts, where men have successfully conducted their own cases, under the simple forms of procedure there required. Therefore, I say that practically, whether there be any legal prohibition or not, men are denied the privilege of going before the District Courts, except when they are represented by counsel. And my recollection in regard to the legal prohibition is different from the gentleman's statement.

Mr. McCLINTON. I rise to a question of order, which is, that the form which the discussion has assumed, is not pertinent to the question before the Convention, and it is only consuming the time in a manner that can result in no possible good.

The PRESIDENT. I do not think the gentleman from Humboldt has taken a wider range than is warranted by his amendment.

Mr. BANKS. As to the matter of fact which the gentleman from Storey states with so much emphasis, I have no issue to take, except that my recollection is different from his on that point; but, so far as that is concerned, I am willing to defer to his recollection. That does not, however, change the fact of men being practically denied the privilege, in the higher courts, while they are practically allowed it in the Justices' Courts.

Now, sir, with regard to the gentleman's other point, as to the necessity of our going back and changing something else, let us consider briefly the history of this matter. The whole subject was considered in the Judiciary Committee, very ably and fully, I have no doubt. A report was made at length, involving various matters which we did not altogether understand, and thereupon we proceeded to consider and amend the article, as reported, in Committee of the Whole. Some sections were amended, others were stricken out altogether, and some entirely new sections were added. Although to some of the action of the committee the gentleman from Storey himself demurred, as well as other members, still section after section was passed upon, until at last a system, which I believe to be a bad one, was completed and adopted. And, sir, upon the very first opportunity which was presented for attacking that system by amendments, I made such attack, and now I deny that the gentleman from Storey has any right to insist that, because we have adopted a bad plan, no amendment must be made, for the reason that it may interfere with the carrying out of that bad system.

Mr. DeLONG. So far as my observation has extended, not one valid argument has been presented in support of this amendment, and only one that is even plausible. It is said first, that it is speedier to try these small cases in the Justices' Courts, but that cannot be shown, and nobody attempts it. In the next place, they say it is cheaper. That cannot be shown. Gentlemen cannot point out how they are going to try a case for one cent less in a Justice's Court than in a District Court. The next point is that a man who is competent to try his own case in a Justice's Court, is not competent to do the same thing in a District Court. That clearly cannot be so, for where he has a better judge, he will necessarily succeed better, having a good judge to instruct him in the event of his going wrong. A person conducting his own case without an attorney, must be better situated the higher he goes. The next proposition is, that in case of an appeal, if your case has been tried in a Justice's Court, by appealing it to the District Court you are enabled to keep track of your case better, being still at home, than if it were appealed from the District Court to the Supreme Court. That is one point, and the only point, in my judgment, entitled to much consideration. If there is any advantage in keeping a case where you can see about it at any time, instead of sending it to the Supreme Court, the amendment confers that advantage in the classes of cases which are included by it. Another point they make is, that it costs less to take up a case on appeal from the Justice's Court. That cannot be shown. The fees to be paid upon an appeal from a Justice's Court to a District Court, I believe are precisely the same as on an appeal from the District Court to the Supreme Court. Again, another proposition is, that judgment would be less speedily rendered in the Supreme Court than in the District Court. There is no reason why that should be so. The Supreme Court will very probably sit continuously, and I think it is likely to be less burdened with business than a District Court, with everything to consider in the way of a law case that involves any amount above three hundred dollars. Therefore there is not a single argument presented in favor of the amendment that is capable of proof—not one.

Now what are the arguments to support the reverse of the proposition? In the first place, if this amendment shall be made, we have got to go to work and revise the entire article, an operation which will certainly occupy a long time, and we are all in haste to conclude our labors. We have considered the subject carefully and fully already, and there ought to be strong reasons presented before we are asked to reverse our action. One of the arguments advanced on that side, and which I had overlooked for the moment, is that the wealthy prosecutor, having his choice of Courts, will sue in the District Court, in some cases, in order to enhance the costs to be paid by his opponent. But, in the first place, I have already shown that it will not necessarily cost more in that court; and in the next place, all analogy and experience is against that argument. Men bring suits in order to recover judgments—that is what they are after—and if the Justice's Court is easier, cheaper, or plainer, they will certainly sue there. And most assuredly there will not be so much likelihood of vexatious delay in that court as in the District Court, and that is what the plaintiff is always anxious to avoid. The defendant can always wait. The plaintiff is sometimes in a hurry to get his judgment, but the defendant need be in no hurry. I see no good reason, in any point of view, why the amendment should be adopted, while I see many good reasons for rejecting it.

Mr. HAWLEY. If I may speak from experience, I will say that in my opinion the Convention has not consulted the true interests of litigants, even in giving to Justices of the Peace the amount of jurisdiction that has already been conferred upon them; and I think that, so far from consulting the interests of litigants by the adoption of this amendment

the Convention would thereby actually be doing a great injustice to litigants, on both sides. Questions as intricate as any in the whole range of the law may come up on the trial of actions for the enforcement of mechanics' liens, and, sir, whilst I do not intend to cast any slur upon the general character of the class of men who usually occupy position as Justices of the Peace—for, generally speaking, I hold them in high esteem as citizens—yet I do not think I am stepping outside of the bounds of reason and truth when I give it as my opinion that not two Justices of the Peace out of five who are elected, would be competent to issue a summons in a case of the foreclosure of a mechanic's lien, to say nothing about deciding the intricate questions that may be involved in the trial of that class of cases.

I repeat that in my judgment this Convention would be doing gross injustice to the interests of parties litigant, by incorporating in our Constitution the amendment proposed by the gentleman from Humboldt. So far as relates to the gentleman's argument, that with his amendment every man will be at liberty to defend his own case, I attach not the slightest degree of importance to it. Those men who find themselves compelled to foreclose mechanics' liens, are seldom men who are able to make out a pleading properly, and much less, if opposition be made, to compete with opposing counsel in relation to points of practice, which I admit are often raised for the mere purpose of embarrassing an opponent. Therefore, I beg to assure those gentlemen that instead of doing a kindness to litigants, by giving Justices' Courts the exclusive jurisdiction which the amendment proposes, they will be doing them gross injustice. I hope and trust that the amendment will not be made, and if those gentlemen were more familiar with the rules of practice in the courts than they are, and sincerely desired to advance the interests of parties litigant, I do not think they would urge such a proposition, for I really do not believe they understand correctly and fully what the interests of those parties are.

The PRESIDENT. I will suggest to the mover of the amendment, that in order to avoid a point of order which might possibly be raised, he had better vary his motion, so as to recommit the section to a special committee of three, with instructions to report it back immediately, with the amendment which he desires shall be made.

Mr. BANKS. I have made that motion.

The question was taken, and the motion was not agreed to.

Sections 9 to 13, inclusive, were read as follows:

Sec. 9. The Legislature shall prescribe the powers, duties, and responsibilities of any municipal courts that may be established, in pursuance of Section 1 of this article; and shall so fix by law the jurisdiction of said court, as not to conflict with that of the several Courts of Record.

Sec. 10. No judicial officer, except a Justice of the Peace, shall receive to his own use any fees or perquisites of office.

Sec. 11. The Justices of the Supreme Court, and the District Judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected, and all elections or appointments of any such judges by the people, Legislature, or executive, during such period, to any office other than judicial, shall be void.

Sec. 12. Judges shall not charge juries in regard to matters of fact, but may state the testimony and declare the law.

Sec. 13. The style of all process shall be, "The State of Nevada," and all prosecutions shall be conducted in the name and by the authority of the same.

No amendment having been offered to either of the above sections,

EQUITY JURISDICTION.

Section 14 was read, as follows:

Sec. 14. There shall be but one form of civil action, and law and equity may be administered in the same action in Courts of Record.

Mr. BANKS. I would inquire of the Chairman of the Judiciary Committee, or some one else, whether those cases which have been enumerated in Section 8, as being such as may be disposed of in Justices' Courts, may not involve both law and equity? And if so, I would inquire further, whether a Justice's Court is likely to be a Court of Record?

Mr. DeLONG. Oh, no.

The PRESIDENT. Those words were incorporated by the committee in addition to the original section as printed.

Mr. BANKS. I move to strike out the words "in Courts of Record," because otherwise the section would exclude Justices' Courts.

The question was taken, and several members voting in the negative, the amendment was not agreed to—unanimous consent being required.

Mr. BANKS. I move to recommit the section to a special committee of one, with instructions to report it back with that amendment.

Mr. DeLONG. What for? What case can you imagine in a Justice's Court where both law and equity need to be administered?

Mr. BANKS. Some of those cases which were enumerated in the amendment to Section 8.

Mr. BROSNAN. Mechanics' liens.

Mr. DeLONG. That is equity. You will have cases then involving both law and equity; but if you give Justices of the Peace power to administer law and equity, you will get double dozes, I apprehend, that will knock litigation "into pi."

The PRESIDENT. I have very grave doubts whether the motion to recommit is in order, after the vote having been taken on the amendment, at this stage of proceedings. I will forego the question of order, however, and will put the motion in the shape in which the gentleman from Humboldt makes it.

Mr. BANKS. I understood the vote taken to be merely a test of the sense of the Convention.

The PRESIDENT. The gentleman will remember that I suggested, when he offered a previous amendment, that he should move a recommitment, in order to avoid any question of order?

Mr. DuLONG. We have given to Justices' Courts equity jurisdiction—as, for instance, in mechanics' liens. That is what is called an equitable action; yet, at the same time, it includes both law and equity. It is legal relief to get a money judgment, and equitable relief to have the property sold to satisfy the judgment. The mechanic is entitled by law to have his claim allowed against the party owning the property, and under that law he gets from the court the money judgment, but not the property. If, then, having obtained a money judgment, the court orders a sale of the property to satisfy it, he gets equitable relief. If he gets both, it amounts to the administration of both law and equity, because the judgment embraces both. Therefore, if we are going to allow Justices of the Peace to have jurisdiction of the foreclosure of mechanics' liens, I hope the gentleman's amendment will be allowed to be made, *nunc pro tunc*, right in the section, without any recommitment.

Mr. BRENAN. I shall vote for the amendment. I think it is decidedly appropriate, now that we have determined to give these powers to Justices of the Peace.

The question was again taken on the amendment proposed by Mr. Rankin, to strike out the words "in Courts of Record," and it was agreed to by unanimous consent.

COMPENSATION OF JUDGES.

Section 15 was read, as follows:

SEC. 15. The Justices of the Supreme Court, and District Judges, shall each receive quarterly, for their services, a compensation to be fixed by the Legislature, and which shall not be increased or diminished during the term for which they shall have been elected, and the Legislature shall provide for setting apart from each year's revenue a sufficient amount of money to pay such compensation; *provided*, that District Judges shall be paid out of the county treasuries of the counties composing their respective districts.

[Mr. CRAWFORD in the chair.]

Mr. McCLINTON. I think the word "law" will read better in that first sentence than "Legislature." It now says they shall receive "a compensation to be fixed by the Legislature," and I will move to amend by striking out "the Legislature," and inserting "law," so as to read—"a compensation to be fixed by law." That is the form usually adopted, I believe.

Mr. JOHNSON. There is one matter to which, in this connection, I desire to call the attention of members of the Convention. It will be seen that by this section it is provided that the salary of the Justices of the Supreme Court—

Mr. KENNEDY. I rise to a point of order. The gentleman from Esmeralda (Mr. McClinton) has offered an amendment which has not been disposed of.

Mr. JOHNSON. The gentleman will pardon me; I did not observe that he had offered an amendment.

Mr. McCLINTON. It will only take half a minute to dispose of it. It is simply to strike out, in the first sentence, "the Legislature," and insert "law."

Mr. FRIZELL. This section is so constructed, that it appears to me the word "Legislature" is more appropriate in that connection. If the gentleman will read on, he will see what I mean. It says:

"And which shall not be increased or diminished during the term for which they shall have been elected, and the Legislature shall provide for setting apart from each year's revenue a sufficient amount of money," etc.

Taking the section altogether, it appears to connect with, and devolve the matter especially upon the Legislature.

Mr. KENNEDY. Of course.

Mr. FRIZELL. I think it is immaterial.

The question was taken on the amendment proposed by Mr. McClinton, and it was not agreed to.

Mr. JOHNSON. What I desired to call attention to was the first portion of the section:

"The Justices of the Supreme Court, and District Judges, shall each receive quarterly, for their services, a compensation to be fixed by the Legislature, which shall not be increased or diminished during the term for which they shall have been elected."

Now we do not propose that the Legislature shall have power to diminish the salaries of any of the judges during the term of the incumbent for whom, or within whose term, the salary has been previously fixed. In other words, we propose that when the judge goes upon the bench, the Constitution and the law shall have fixed the salary, which shall not be changed so as to affect him. But in the event of a reduction of the number of judges, which may occur by the passage of a law at any time, the provision in the Constitution ought not to be so broad and comprehensive as to prevent such a law from affecting a person elected or appointed to fill an unexpired term. Now, within my remembrance, more than one instance has occurred in California, showing the operation of a constitutional provision, precisely like this, whereby a judge, having been appointed to supply an unexpired term, the Legislature having in the meantime reduced the salary, after two or three years had passed, the Legislature was called on to appropriate the additional amount. I would desire especially to secure the attention of legal gentlemen to this portion of my remarks, as in my own opinion, at least, it is a matter worthy of consideration.

I was remarking that I have knowledge of more than one instance in California wherein the operation of the same constitutional provision had such an effect. Appointments were made to the Supreme bench, and I believe in one instance to the bench of the District Court, after the Legislature had reduced the salary, a

vacancy occurring by the death of the incumbent, in one instance, and by resignation in another. The persons so appointed entered upon their duties with the expectation of being paid the reduced salary, and certainly not remotely contemplating any increase of salary, to the amount specified by the law which was in force effecting their predecessors. But after the lapse of some time, it was discovered that under the constitutional provision there was a question as to the power of the Legislature to reduce the salary, not only during the incumbency of their predecessors, but during the entire term for which such predecessor had been elected. The matter became a subject of judicial inquiry, and the result was that after the lapse of two or three years the Legislature was called upon to make appropriations, and did so make them, to the amount of several thousand dollars, which amount was paid by the State, in addition to the salary as fixed by law. Notwithstanding that they had accepted office, expecting to receive only this reduced compensation, yet in consequence of the language of this provision—"during the term for which they shall have been elected"—it was held that it not only related back, but applied as well to the person serving the residue of the term, giving to such the higher rate of compensation.

Mr. DuLONG. That is good law, is it not?

Mr. JOHNSON. Yes, sir; but it is very bad policy. I do not at all question the correctness of the decision, but I say the policy is most questionable. Suppose a person who is elected serves but a part of the term, say within three or four years, and then dies or resigns, the Legislature in the meantime having seen proper to reduce the salary, to take effect after he shall have vacated the office, by any of the modes recognized by the Constitution? That reduction cannot affect the person who is in the office at the time the compensation is fixed by law, but the person elected or appointed to fill the vacancy, after the lower rate of compensation has been established, should properly be affected by it, because then the reason of the rule ceases to exist. The idea is, that when a person has been elected, he shall not be subject to the control of the Legislature, as he would be if that body had power to reduce his salary, but that when he enters upon his office he shall be entitled of receiving the fixed salary for the full term, if he shall so long remain in office. The provision is a proper one, therefore, as to the person when so elected, but it should cease to operate when another accepts the office with full knowledge of any reduction which may have been made. For this reason I would like to have the language varied so that the restriction shall not apply in case of a vacancy.

Mr. DuLONG. We can put in a qualification by adding "unless in case of a vacancy."

Mr. JOHNSON. I am informed by the Chairman of the Judiciary Committee that the subject was discussed in that committee, and while it was conceded that the question had been raised in California, it was thought, nevertheless, that the restriction would not apply in case of a judge being appointed to fill a vacancy. But, sir, that is a question which has already been adjudicated in California, and when we adopt the language of the California Constitution we necessarily adopt with it the legal interpretation that has been given to that language in California; and this is but an additional reason why I think it is exceedingly important to have the language of the section so far modified as to prevent our Legislature from paying such additional sums. In the three instances to which I have adverted, in California—one in a District Court, and two in the Supreme Court—the additional sums which were paid to the judges amounted to not less than ten or fifteen thousand dollars; and the effect of the adjudication may have been to cause even larger sums to be paid, in other instances, which were not legally investigated. I have prepared no amendment to cover the matter, because I preferred first to present my own views on the subject, and to obtain the sense of the Convention as to whether or not it is advisable to so amend the section as to obviate the possible contingency of such a result.

Mr. DuLONG. If the gentleman will read the clause again, I think we can very readily agree upon an amendment.

The SECRETARY again read the first clause of Section 15.

Mr. DuLONG. I will suggest that we add, after "elected," the words:

"Unless a vacancy occur, in which case his successor shall receive such compensation as may be established by law at the time."

Mr. JOHNSON. I will suggest this as being sufficient to meet the difficulty:

"*Provided*, that any person elected or appointed to fill an unexpired term shall receive such compensation as may be provided by law at the time when such person shall have entered upon the duties of his office."

Mr. DuLONG. The only objection I have to that amendment is, that the appointment may be made on one day, and a law fixing the salary at a certain sum may be passed by the Legislature on the following, or some subsequent day. For instance, a vacancy might occur on the Supreme bench just previous to the meeting of the Legislature, by the death of one of the judges elected, perhaps. Then the appointment is made, but the man does not enter immediately upon the discharge of his duties, and in the meantime the Legislature may meet and pass a bill changing the salary of the office. In that case injustice might be done to the person appointed. He accepts the office at a certain fixed salary, but before the time when he enters upon the duties of the office, the Legislature, being dissatisfied, possibly, with the appointment, changes the salary.

Now I have drawn my amendment in writing, and will read it for the information of the Con-

vention. I propose to insert after the the word "elected," the following:

"Unless in case a vacancy occurs, in which case the successor of the former incumbent shall only receive such salary as may be provided by law at the time of his election or appointment."

Mr. JOHNSON. I do not perceive the difference.

Mr. DeLONG. The difference is this. The amendment suggested by the gentleman from Ormsby provides that the compensation shall be as fixed by law when the person elected or appointed enters upon his duties, while mine says his salary shall be as may be provided by law at the time of his election or appointment.

Mr. JOHNSON. He enters upon his duties when he takes the oath of office.

Mr. DeLONG. I know; but that may not be until some time after his election or appointment.

The PRESIDENT *pro tem.* The election takes place in November, and there is a matter of two months interval between that time and the meeting of the Legislature.

Mr. DeLONG. Suppose the man elected or appointed should be out of the State at the time? It might be two months, or more, before he would enter on the duties of the office.

Mr. JOHNSON. Then he knows, before he goes into office, precisely what the compensation is to be. But the practical objection raised by the gentleman from Storey, I conceive, cannot exist. I have no objection whatever to providing that he shall take the place at the salary provided at the time he is elected or appointed, but, according to my own experience and observation, scarcely ever more than forty-eight hours expires after a man receives his commission before he enters upon the duties of the office. I have appointed two Judges of the Supreme Court of California, and I know that each of them entered upon the discharge of his duties within an hour after being commissioned.

Mr. DeLONG. I believe the term commences in January. Suppose, now, that a man is elected judge at the November election, but vacates the office by death or otherwise, and another person, who is appointed to fill the vacancy, is delayed by some cause which prevents him from entering upon his duties till some time after the commencement of the term. Under the amendment suggested by the gentleman from Ormsby, could not the Legislature in the meantime meet and change the salary?

Mr. JOHNSON. The contingency is rather remote, but as I do not see any essential difference, I am willing to accept the amendment proposed by the gentleman from Storey.

Mr. DeLONG. If there is no essential difference, I will withdraw my amendment.

Mr. JOHNSON. I say I am willing to accept the gentleman's amendment; I withdraw mine.

The PRESIDENT *pro tem.* The Secretary will read the amendment offered by the gentleman from Storey.

Mr. DeLONG. I will withdraw it.

Mr. JOHNSON. No; I have withdrawn mine. I conceive that there is no essential difference, and I am sure the gentleman from Storey desires to accomplish the same end that I do. Besides, his amendment is shorter, while it attains the same result, and therefore if he will move it as an amendment, I will second it; or he may move, if necessary, to recommit with instructions to make the amendment.

Mr. DeLONG. Let us hear the section read, with the amendment, so that we may judge of its grammatical construction.

The SECRETARY read the section, as proposed to be amended, as follows:

SEC. 11. The Justices of the Supreme Court and District Judges, shall each receive quarterly for their services a compensation to be fixed by the Legislature, and which shall not be increased or diminished during the term for which they shall have been elected, unless in case a vacancy occurs, in which case the successor of the former incumbent shall only receive such salary as may be provided by law at the time of his election or appointment. And the Legislature shall provide for setting apart from each year's revenue a sufficient amount of money to pay such compensation. *Provided*, that District Judges shall be paid out of the county treasuries of the counties composing their respective districts.

The question was taken on the amendment proposed by Mr. DeLong, and it was agreed to by unanimous consent.

Mr. DeLONG. Now I call attention again to the amendment suggested by the gentleman from Esmeralda. (Mr. McClinton,) to strike out the words "the Legislature," and insert instead the word "law," in the first clause. The point is, that it is not the Legislature alone, but the Legislature and the Governor together, who make the laws. The Legislature might pass an act to fix the compensation of the judges, and then the Governor refuse to sign the bill, but still it might be claimed that the compensation had been established, because the language of the Constitution is, "a compensation to be fixed by the Legislature." Now let us avoid any confusion and difficulty of that kind by substituting the word "law."

Mr. JOHNSON. I hope we shall adopt the amendment; we have variously the same course two or three times to-day, making an obvious distinction between "the Legislature" and the "law."

Mr. DeLONG. I move, as an amendment, to strike out "the Legislature," and insert the word "law."

Mr. McCLINTON. I am very glad indeed to find that at last my idea is seconded by two of the ablest members on the floor, and the best versed in legal lore. I offered this same amendment a short time since, with the view of making the whole instrument harmonious, and for the very reason assigned by the gentleman from Ormsby, (Mr. Johnson,) because we have adopted and followed out that rule from the beginning of our labors in framing this instrument, and this, it seemed to me, would be the only exception to that rule. I wanted it all to read alike, and hence I moved to amend this

section so as to be in conformity with the balance of the Constitution. I presented the best arguments I could in favor of the amendment, during the short time allowed me. I could not the point very well, but I failed to make them see it, and consequently I believe nobody but myself voted for the amendment. I hope, now that I have got such incontrovertible authority on my side, that the amendment will prevail.

Mr. JOHNSON. The only apology I have to offer is, that I was at the time busily occupied with another matter, or I certainly should have come to the gentleman's rescue.

Mr. FRIZELL. If I opposed the gentleman's amendment, it was not through any factiousness on my part. Inasmuch as the word "Legislature" is used twice in the same section, and I think in the same sense, I believed the committee must have had good and sufficient reasons for it.

Mr. CHAPIN. The gentleman from Somerville should understand, in order to account for the defeat of his amendment, that it was opposed by the gentleman from Gold Hill, (Mr. Frizell,) and he is in full moon to-day. [Laughter.]

The amendment offered by Mr. DeLong was adopted by unanimous consent.

Mr. JOHNSON. Now I call attention to the language which occurs immediately following. It says—"and the Legislature shall provide for setting apart," etc. I think it should read—"provision shall be made by law."

Mr. FRIZELL. I tell the gentleman from Esmeralda his moon is full. [Laughter.]

Mr. JOHNSON. I will move to make that amendment in the following clause—to strike out the words "the Legislature shall provide," and insert the words "provision shall be made by law."

Mr. DUNN. I hope the gentleman is not going to steal the thunder of the gentleman from Esmeralda.

Mr. McCLINTOCK. I am willing that my friend from Ormsby should divide the honors with me on this amendment.

Mr. KINKEAD. Who takes the "odd trick?" [Merriment.]

The SECRETARY read the section, as proposed to be amended.

Mr. DeLONG. I hope the gentleman from Ormsby will pay attention to the reading.

Mr. JOHNSON. I have heard every word that has been read.

The PRESIDENT pro tem. It is hoped that gentlemen of the legal profession especially will give their attention.

The section was again read, with the proposed amendment.

The amendment was agreed to by unanimous consent.

[illegible] occurs.

Mr. BANKS. I would inquire of gentlemen whether in Section 12, as numbered in the printed copy of the article, (Section 9 as renumbered,) the words "by law" have been inserted. It says—"the Legislature shall prescribe the powers, duties, and responsibilities of any municipal court," etc. That is the same kind of a case, and I move to amend by inserting after "Legislature," the words "by law."

Mr. DeLONG. I do not like the reading of that. It would be better to say their "powers, duties, and responsibilities shall be prescribed by law."

Mr. BANKS. Very well; I have no objection. If the words "by law" are inserted after "prescribe," however, it will read very well—"the Legislature shall prescribe by law the powers, duties," etc.

Mr. McCLINTOCK. If I understand it correctly, whenever the Legislature prescribes anything, it is "prescribed by law," and therefore it seems to me that the words "by law" are superfluous, because before it can be prescribed it must have the signature of the Governor, and if it has that signature, it becomes a law; so that "by law" is entirely superfluous.

Mr. BANKS. If there was any virtue at all in the other amendments which have been made, (and I do not really believe there was so much as some gentlemen claimed,) I think there is also virtue in this; because the Legislature might prescribe by resolution, just as it may establish rules for its own government, upon a mere motion. But having changed the phraseology in those other cases, I maintain that by very strong implication we are required to do the same thing in this case.

Mr. DeLONG. I think it would render the section more harmonious to say, "provision shall be made by law, prescribing the powers, duties," etc.

Mr. BANKS. I have no objection, if the gentleman will write out his amendment.

Mr. DeLONG. The Secretary can get it down in half a minute. I do not like to do so much work for nothing. [Merriment.]

The SECRETARY (after consulting with Mr. DeLong.) The amendment is to strike out, in the first line, the words, "the Legislature shall prescribe," and insert in lieu thereof, "provision shall be made by law prescribing;" also, to strike out the words "shall so fix," and insert instead the words "also fixing;" also, to insert after "said court," the word "as." The section would then read as follows:

SEC. 9. Provision shall be made by law prescribing the powers, duties, and responsibilities of any Municipal Court that may be established in pursuance of Section 1 of this article, and also fixing by law the jurisdiction of said court, so as not to conflict with that of the several Courts of Record.

Mr. BANKS. "Provision prescribing," sounds very ill. I think the gentleman had better fall back on the simple insertion of the words "by law."

Mr. JOHNSON. I think that would fully cover it.

Mr. BANKS. I will move to amend, so as to read, "the Legislature shall prescribe by law

the powers, duties," and so on. Then the section will require no further amendment.

The PRESIDENT *pro tem.* Does the gentleman from Storey withdraw his amendment?

Mr. DeLONG. By no means.

The question was taken on Mr. Banks' amendment, to insert "by law," after the word "prescribed," and it was agreed to by unanimous consent.

The PRESIDENT *pro tem.* The question recurs on the amendment of the gentleman from Storey, (Mr. DeLong,) as now amended.

Mr. DeLONG. I would withdraw my amendment if I could get it out, now without withdrawing also the amendment of the gentleman from Humboldt, but I do not wish to take them both out.

Mr. BANKS. It is not material.

The amendment offered by Mr. DeLong was agreed to by unanimous consent.

JUSTICES OF THE PEACE.

Mr. CHAPIN. Now I ask for the reading of Section 8.

The SECRETARY read Section 8, as heretofore amended.

Mr. BROSNAN. I suggest that we insert, after "Justices of the Peace," the words "by law." [Laughter.]

The PRESIDENT *pro tem.* Is there any objection?

Mr. BROSNAN. I only offered that amendment jocularly, because I see no force in some of the amendments which have been made. I do not wish, however, to appear on the record as idling, and I withdraw it.

Mr. McCLINTON. The Convention has not only stolen my sparrow, but is actually trying to make an eagle of it.

SPECIAL COURT FEES.

Section 16 was read, as follows:

SEC. 16. The Legislature, at its first session, shall prescribe that upon the institution of each action, and other proceeding, and also upon the perfecting of an appeal in any action or proceeding in the several Courts of Record in this State, a special court fee or tax, to be fixed by law, shall be advanced to the clerks of said courts respectively, by the party or parties bringing such action or proceeding, or taking such appeal; and the money so paid in shall be accounted for by such clerks, and applied towards the payment of the compensation of the judges of said courts, as shall be directed by law.

Mr. JOHNSON. I propose to strike out the word "shall," in the first sentence, and insert the word "may" in its stead. To my mind there is an obvious distinction in the use of those words, and certainly there is in the sense in which the word "shall" is here used. I am perfectly willing to invest the Legislature with authority to provide for a court fee, but at the same time I cannot consent to make it a mandatory requirement. I will therefore move, if there be objection, to refer the section to a special committee, with instructions to strike out "shall" and insert "may."

I know not, sir, neither do I care, whether there does or does not exist, ordinarily, any legal distinction between those words, for I am satisfied that the word "shall," in the connection in which it is here used, is common mandatory, while the word "may" would only be directory. The point at issue is simply this—and it will be remembered that I have heretofore had occasion to give expression to my views relative to this matter—that we do not want, or, certainly, I do not, to compel the Legislature to place every man, be his circumstances what they may, under the necessity, when he enters a court of justice of paying more money, in the way of costs, than he is required to pay in other States, under ordinary circumstances—that is, more than the ordinary fees connected with litigation.

It may be necessary, in the first few years of the existence of our State, that a very considerable fund shall be derived from this source, but when such necessity shall no longer exist, I do not want to compel the Legislature to continue the tax. I have no doubt that the Legislature will recognize the necessity of imposing the tax for the time being, and act accordingly at its first session. It will unquestionably make ample provision for such a fund, and in doing so, will probably impose what, in after times, would be considered an onerous and oppressive tax, in the shape of court or docket fees. But when that tax shall have done its service, and shall be no longer required as a public necessity, I am unwilling to have a provision in the Constitution of the State which will prevent the Legislature from abolishing it. It is a measure which, in my judgment, should only be resorted to in case of extreme necessity; and if we adopt here the word "pay," then, as I have already said, the Legislature will have power, when the public necessity shall have ceased, to discontinue the tax. I regard such a tax as in its nature most burdensome, because it is not always the men who are most abundantly blessed with this world's goods who are called upon to pay it, but, on the contrary, it is usually those who are but little able to bear it; and if we are going to derive any considerable income from such a source, it must be by imposing an exorbitant tax. I therefore hope that the section will be recommitted, with instructions to substitute the word "may" for "shall."

Mr. DeLONG. In the first place, I am opposed to this amendment, because if we substitute the word "may," no other or further language being used, and the section having reference to the action of a public body, I do not believe it will make a particle of difference in the sense; because it has been judicially decided that "may" means "shall," when applied to the action of a public body, relative to public affairs.

But I have another reason. I believe it is best—and not only best, but exactly right—that those who dance shall pay the fiddler; in other words, that those who go to law shall

pay the expenses of adjudicating their rights, and not ask that a part of their burden shall be sustained by those who do not enter at all into litigation. Now it will be, and is already, one argument urged against the change from the Territorial to the State form of government, that our courts are going to be a great burden in the way of taxation upon the people. It is said that they are very generally monopolized by litigants in mining cases, nine-tenths of whom are residents of San Francisco, or, at any rate, non-residents of this State; that whilst they monopolize our courts, the judges, who are maintained on the benches at high salaries, are to be paid by direct taxation, wrung from the people of this State; and that those who are asking for the change, and who require the services of the judges and courts, are either non-residents, or non-tax-paying residents of Nevada.

Now, sir, when I go before the people of the State in advocacy of this Constitution, and say to them—"Why, gentlemen, we have provided in the Constitution that a docket fee may be levied, by which the judges will be paid by those who are engaged in litigating;" I do not want to be replied to—"Yes, but you say it may be levied, and the mining interests will invariably control the Legislature, and prevent its levying such a tax, so that after all we shall have it to pay." I prefer to say "shall," and then we can go before the people, and successfully combat arguments of the character I have mentioned, telling the people that under the Constitution we have framed, this docket fee is imperatively required to be imposed, so that the salaries of the judges will be paid by those who have the services of the judges. I want to deal fairly and squarely with those whom I represent.

And in answer to the other argument, that it might be policy to require such a tax to be levied for the present, whilst the resources of the State are limited, and that the time may come when the necessity will not exist, I have to say that I do not agree with that view, because I believe that the necessity will continue to exist as long as courts are necessary, and litigants go into them. If the necessity ever does cease, however, the Legislature, if it is deemed expedient to do so, can reduce the fee to a merely nominal figure. But, sir, it is always right. I do not care if we establish a State on such a prosperous basis that the taxes required for the support of the government will be at the lowest conceivable figure; even then it is right that those who go to law shall be required to support the officers of the law, without calling upon those who never resort to the courts of justice. It is always right in principle, and I hope we shall allow the language to remain as it is, so that we may not be deprived by the Legislature of what we have sought to obtain, for it has seemed to be the will, at least, of a large majority of the Judiciary Committee, if not of the whole Convention, that this provision shall be made, so that the judiciary shall be paid by the litigants.

Now a word as to the argument relative to the hardship upon litigants of such a provision. He must be a very poor man indeed, or a very penurious one, who is not willing to pay a fee, say of ten dollars, upon the institution of his suit, knowing that he will get it back with other costs, if his case is gained. And it is not much to require a man to pay, after he has been prosecuting or defending a bad cause for a long time, and so consuming the time of public officers at the public expense. And I trust that under such a provision the Legislature will regulate things a little differently from the way they are managed at present. A man who now goes into court, and wants to commence a suit, is required to pay down a certain sum in advance, say for ordinary cases, fifteen, twenty, or thirty dollars, as a deposit for the clerk's fees; and then he also has not only to pay the Sheriff for the work he does, but also to make a deposit ahead. Now we might relieve litigants a little by providing that they shall only pay the officers as fast as they do the work. For instance, for issuing summons, one dollar, for filing complaint, one dollar, and so on. Now when complaint is filed, and summons issued, the plaintiff has to pay the clerk ten dollars, and let him hold the remaining eight dollars until the case is determined, whether the other side make any defense or not. We can relieve poor litigants from this tax, and then, if they are required to pay the docket fee, they will nevertheless not be called upon to pay a dollar more, at the commencement of a suit, than they do now. In that way we can obtain an income, from this source, for the payment of the judges salaries, and at the same time no hardship will be inflicted upon poor men.

Mr. JOHNSON. If the gentleman from Storey be correct in his conclusions, and especially in his enunciation of the legal proposition with which he started out in his argument, I do not see how it happens that he opposes this amendment.

Mr. DeLONG. If the gentleman will allow me, I am reminded by that remark, that there is one point upon which I forgot to dwell. I object to the proposed amendment for the reason that other men may construe it differently from my own construction. The reply to our arguments on the stump would be that the Legislature may do this, and it may not; that the Convention struck out "shall," because it did not want to make it imperative. Let us leave that word, and then people will know that litigants have got this court fee to pay. If we put in the word "may," I might talk an hour, and still men would believe that the provision left the matter at the discretion of the Legislature.

Mr. JOHNSON. The gentleman, then, has but little confidence in his own judgment, and very properly conceives that the people will

not indorse it more readily than he himself does.

Mr. DuLONG. I see a striking example of that now. (Merriment.)

Mr. JOHNSON. Yes, and if the gentleman will refer to his books—it is sometime, I apprehend, since he consulted them much—I think he will find a more authoritative utterance than mine in controversion of his legal proposition. I believe that these words "shall" and "may," have a different meaning, when they are used in this connection; and perhaps the best argument in support of that view, is to be found in the elaborate effort which the gentleman from Storey has made, to show, for reasons other than that of the dissimilarity of those words, the necessity for the retention of the word "shall."

The gentleman says it is always right in principle to compel those who go to law to pay the expense of maintaining the officers of the law. It is well known, sir, that but few men resort to the courts of law except in cases of extreme necessity. When they cannot obtain in any other manner what they regard as their rights, then, and not before, do they invoke the law. And it is not solely or mainly, as the gentleman suggests, residents of California, or other States, who appear as parties litigant in our courts, but they are our own citizens, and amongst them many of the poorer classes, men who find it a very difficult matter indeed to raise the funds necessary to even start their cases, independent of the expense of protracted litigation. Hence I do not want to leave this provision mandatory upon the Legislature for all time. I desire that the Legislature shall be clothed with this power, as I have already remarked, so long as the public good shall need it, but when the public interest no longer requires this burden, let the Legislature be empowered to remove it.

Again, it is the plaintiff, *prima facie* in the right, who is to be subjected to the proposed tax. Though he may have been wronged never so much, he is obliged nevertheless to bear the burden of expense. The gentleman tells us that he can get it back in his bill of costs, but he is aware that, though the plaintiff may obtain judgment, in many cases he fails to recover a cent of costs, or otherwise. I discover no good reason why this subject should be placed within the category of mandatory requirements, whilst, on the other hand, I see ample reasons for leaving it discretionary with the Legislature.

I care not what may have been the past action of the Committee on the Judiciary, or of the Convention, on this matter. That is not a sufficient reason to govern my vote on any important question; for I know not why I should bow in meek humility and subserviency to the wishes that may, or may not have been expressed by the Convention heretofore. This article has now reached a stage where, if we desire to make alterations, we can only do so through the form of motion, which I have made, and I propose to avail myself of the record, in order to give the gentleman from Storey, as well as every other member, the same opportunity which I seek myself, that is, an opportunity of vindicating his views by his vote upon the proposed amendment. I do not expect to change the determination of the majority; I am actuated by no such motive; but for my own part, I would infinitely prefer to be with the minority and have the approval of my own judgment, than to be with the majority and yet be conscious of doing wrong. Entertaining these views, I move that the section be recommitted, with the instructions I have submitted, and at a proper time I shall call for the ayes and noes.

Mr. BANKS. There is one thing which I dislike about the section as it stands, and that is, the requirement that the Legislature "at its first session" shall make this provision.

Mr. CHAPIN. I think that is stricken out. I believe I made the motion myself.

The SECRETARY. It reads, as engrossed: "the Legislature, at its first session, shall prescribe," etc.

Mr. BANKS. It is obvious that that reading would, by pretty clear implication, prevent the Legislature from changing it afterwards, and I suggest that we might insert other language which would enable a subsequent Legislature to modify the provision. I have prepared an amendment to strike out the words "at its first session," and to insert after "shall prescribe," those words, "by law," which have been so much in favor here to-night. Then it would read: "The Legislature shall prescribe by law." I would then be in favor of a further amendment to allow the Legislature to change the amount of the prescribed fee.

Mr. DuLONG. I do not think there can be any doubt about the right of the Legislature to regulate the matter; any subsequent Legislature could repeal or modify the act.

Mr. WETHERILL. If those words are stricken out, as proposed by the gentleman from Humboldt, (Mr. Banks,) the whole force and virtue of the clause is lost. We need this tax at the outset. After a while, as the gentleman from Ormsby (Mr. Johnson) suggests, we may not need it; but at the outset, while our financial affairs are in a crippled condition, it is a matter of necessity. Therefore, if those words are stricken out, the whole virtue of the provision is gone.

Mr. CHAPIN. I hope the amendment to strike out the word "shall" and insert "may" will not prevail. There is no doubt that we need such a tax, and need it now, and it will unquestionably be provided for at the first session of the Legislature, if we give the necessary authority. And gentlemen need not flatter themselves that the word "may" would be construed as having the same meaning as the word "shall," especially after the direct and positive assertions of the gentleman from

Ormsby, (Mr. Johnson,) which, of course, go upon the record of our debates.

Mr. DeLONG. But there have been assertions to the contrary.

Mr. CHAPIN. Exactly. My friend will no longer seem to insist that the words are the same in meaning, but the motion of the gentleman from Ormsby, and the reasons which he gives for making that motion, go upon the record of the debates and proceedings of the Convention, and when they are referred to it will settle the whole thing. He says he makes the motion because he wishes to leave it to the discretion of the Legislature, and if we adopt the amendment it will stand with that interpretation. I hope we shall allow the section to remain as it is.

Mr. FRIZELL. I find that in framing a State Constitution, as in other matters, the best of men will sometimes get into a certain situation. Now, Mr. President, it is perfectly plain to my mind, and I have no doubt that it is the sense and feeling of this Convention, that there should be placed in the hands of the Legislature, power to regulate this matter in the future. That is certainly my own desire. But here comes up another question. You, Mr. President, and gentlemen of the Convention, will recollect that there is a section in this article of our Constitution, already adopted, which declares that the District Judges shall be paid out of the county treasuries of the counties composing their respective districts. That is one of the features of our Constitution which has been determined upon, and no doubt it is an eminently proper one. Then this provision comes in as something new—in addition or supplementary to that—and in our present financial condition, it appears to me that this word "shall" ought to be retained. Nevertheless, as the State progresses, it may become unnecessary in the future, and I agree perfectly with the views of the gentleman from Ormsby (Mr. Johnson) on that point. But this question of the judges being paid out of the respective county treasuries, is something which has not heretofore been touched upon in the arguments which have been presented.

Mr. DeLONG. What difference does that make?

Mr. FRIZELL. I think it makes a good deal of difference. I am not willing to be taxed in Storey County to pay three District Court Judges, because I opposed that proposition from its inception, believing that two would be enough. Looking at the Constitution as a whole, upon all its parts, and all its bearings, I should like to place this matter of a court fee in the hands of the Legislature, so that it may be modified in the future, as occasion may arise, or even abolished if deemed expedient. And yet, at the same time, if we do that, I know what the people will say. They will tell us that we have fixed upon these three judges, and that they will be compelled to support them out of the county treasuries. They do not object in having judges, but they do not want to be taxed for the payment of their salaries.

Mr. McCLINTON. I hope the word "shall" will be retained, and I think the argument of my friend from Storey (Mr. DeLong) is sufficiently forcible to convince a majority of the members of this Convention that it should be retained, and also, that it will not work a hardship to parties litigant, whether they be rich or poor. The Legislature will certainly have control of the matter, to the extent of fixing the amount of the fee to be paid by the plaintiff, before commencing his suit in any court. Suppose that at the first session the Legislature fixes the fee in the District Courts at ten dollars, and the next year, or two years afterwards, it is found that a fee of five dollars will be ample; in that case the Legislature would have a perfect right to reduce the fee from ten to five dollars. And if the next year following it should be found that two dollars and a half would suffice, the Legislature could make a further reduction to that figure; and so on till the fee would practically amount to nothing—a fee of twenty-five cents, if you please. I believe that under this section, as it stands, the Legislature would pursue that course. If it finds that a fee of ten dollars is quite unnecessary, it will fix a lower sum. It is not to be supposed that the members of the Legislature will be such monsters as to glory in human misery, or that they are going to tax the people for the fun of so doing. I do not attribute such motives to those gentlemen who are to be our legislators in the future.

As to the amendment which has been proposed by the gentleman from Humboldt, (Mr. Banks,) I desire to offer a substitute which I am satisfied he will accept. I propose to amend the first clause so as to read: "The Legislature, at its first session, and from time to time thereafter, shall prescribe," etc.

Mr. BANKS. I accept the amendment, and will suggest to the gentleman that he send it up in writing.

Mr. JOHNSON. I do not want these questions mixed. If the Convention desire to take a vote on the gentleman's amendment, I have no objection, because my amendment will apply just as well afterwards, whether his be adopted or rejected. I object, however, to confounding two propositions, which in fact are entirely distinct.

Mr. McCLINTON. I will withdraw the amendment for the present, with the consent of the gentleman from Humboldt, and let the question be first taken on the amendment offered by the gentleman from Ormsby.

Mr. BANKS. Very well.

Mr. DeLONG. I wish to say merely a word more.

Mr. KENNEDY. Time!

Mr. DeLONG. No, sir; I was watching the clock when I spoke before, and had a minute left. Besides, the gentleman has interrupted

ute a minute more, and that makes two minutes. [Laughter.]

I did not wish to question the motives of the gentleman from Ormsby, (Mr. Johnson,) when I said that a large proportion of the Convention seemed to be in favor of the section as it stands. I did not desire to bolster up my side by that statement, nor to intimate that the gentleman from Ormsby had not a right to insist, even if every member of the Convention were against him, upon taking the vote on his amendment. I had no such meaning as that.

And so far as the relative meaning of the words "may" and "shall" are concerned, I have only to reply to the remarks of the gentleman from Ormsby, that I was recently engaged in a case tried before Judge North, in which that very question was involved. There were four counsel on our side, and five against us, and we were engaged in the matter five days; and it was finally determined by Judge North that the word "may," when applied to a public body, meant "shall." That is my authority.

Mr. HAWLEY. I want to ask one question. Do these gentlemen, who are such earnest advocates of the measure, believe that a docket fee of ten dollars in each case will pay the judges' salaries?

Mr. DeLONG. I do believe that it will pay every judge in the Territory.

Mr. HAWLEY. It would require that there should be twenty-one hundred cases on the docket to pay the salaries of the Supreme Court Judges.

Mr. DeLONG. We are not speaking about the Supreme Court Judges, but the District Judges.

Mr. HAWLEY. With the lights before me, I am firmly of the opinion that a docket fee of ten dollars, whilst it might go a great ways towards paying the salaries of the judges in Storey County, would amount comparatively to but a trifle in my own county; or, I may say, in any other county in the proposed State of Nevada. Such being the case, it seems to me that a great deal more time than necessary has been consumed in the discussion of this question. I have to say further, that I agree almost entirely with the views presented by the gentlemen from Ormsby. (Mr. Johnson,) and particularly with the position he takes, that such a tax would be an onerous and burdensome one upon litigants, in a great many cases. I did not happen to be present when this question was previously under consideration; if I had been, I should certainly have voted against authorizing a docket fee.

Mr. WETHERILL. If a fee of ten dollars is not going to be sufficient, I hope the Legislature will make it twenty, and, as the gentleman from Storey (Mr. DeLong) says, let those who dance pay the fiddler. That is the correct principle. If you want the people to pay the expenses of private litigation, then, upon the same principle, the people in a body should be called upon to come up and pay the clerk's and Sheriff's fees, and all the other expenses incurred in conducting a law-suit. Now the party who loses the case is presumed to have been in the wrong, and I say the man who is in the wrong—the one who improperly prosecutes, or improperly defends an action—ought to be required to pay the expense which he has incurred, and should not be allowed to call upon others to share the expense with him. I think that is just and right.

Mr. MASON. As to the question of "shall" or "may," I wish it distinctly understood, in order that I may appear right on the record, that I do not care a cent which word is used. [Laughter.]

Mr. JOHNSON. The gentleman from Douglas (Mr. Hawley) has suggested that, according to his calculation, it would require twenty-one hundred cases, with a tax of ten dollars, to meet the salaries of the Judges of the Supreme Court—that is, to raise twenty-one thousand dollars. Then I understand the gentleman from Storey (Mr. DeLong) to say, that there will probably be many more cases than the number stated. I cannot believe there will be so many as twenty-one hundred cases in a single year in the Supreme Court, and I submit to the gentleman that he had better correct his figures.

Mr. DeLONG. I alluded then to the District Court, and in my judgment, giving the District Court all the business now done by the Probate Court, and everything else amounting to over three hundred dollars, such a tax will pay the salaries of every one of the Judges of the District Court in Storey County. I am satisfied of it. There are always more cases dismissed than get upon the calendar, as every lawyer knows. We have now about five hundred cases on the calendar, besides a great many which are not yet there, and at least double that amount have been settled. Sometimes ten or fifteen new cases a day are commenced by one firm, that I know of, and I presume there are by others. When we get good courts, business will increase. And then we shall have the right to appeal to the Supreme Court, and I should not be at all surprised to see as many as a thousand cases a year appealed to the Supreme Court, for a number of years to come. And suppose the tax pays, towards the salaries of the Supreme Court Judges, not twenty-one thousand, but ten thousand dollars; even that will be a great relief to the tax-payers generally. And as the gentleman from Esmeralda (Mr. Wetherill) has suggested, if ten dollars is not enough, the Legislature can make it twenty.

Mr. COLLINS. I am decidedly in favor of this fee, and I am in favor of it on principle. I do not believe that well disposed people, who try by every possible means to keep out of litigation, should be taxed to support litigants. And I never could see the justice, myself, of exacting a docket fee from the humble litigants

in the Justices' Courts, while the great litigation which occupies the time of the higher courts is sustained by taxes paid by the public at large. If that kind of sauce is good for the goose, it should be good for the gander. If it is proper just, and right to tax a humble litigant who goes before a Justice's Court to enforce a demand for five, ten, or twenty dollars, or more, it certainly seems to me to be eminently proper that the litigant who goes before the higher court, with his claim of two thousand, ten thousand, or twenty thousand dollars, should, upon the same principle, be called upon to pay something toward the expense of sustaining the court.

Mr. JOHNSON. I do not understand the pertinency of the remarks of the gentleman who has just taken his seat, when he assumes that the humblest litigant in a Justice's Court is required to pay a docket fee.

Mr. COLLINS. I think I can make myself clear to the Convention on that point, if not to my excellent friend from Ormsby. I say, if it is proper to support a District Judge by a salary which has to be paid out of the taxes of the people, it is also eminently proper, I think, to support a Justice of the Peace by a salary to be paid by the taxes of the people in like manner. Am I understood?

Mr. JOHNSON. No, sir; or at all events the gentleman has not reached the point yet. He is assuming, as I understand, that a docket fee has to be paid by litigants to a Justice of the Peace—

Mr. COLLINS. And so it has.

Mr. JOHNSON. Allow me to explain; I had not finished my sentence. A Justice of the Peace occupies the same relation to parties litigant, so far as fees are involved, as does the clerk of a higher court. He has his own office, and is entitled to his fees at the same rate as the clerk of the District Court.

Mr. DeLONG. And he does not receive a cent of salary outside of his fees.

Mr. JOHNSON. Certainly not; neither does the clerk. They both receive fees, but as to its being a docket fee, it can no more be regarded in that light in the one case than in the other. It is not a docket fee that is paid to the Justice of the Peace, under existing territorial laws, because his services are compensated exclusively by fees of office.

Mr. COLLINS. It matters not in regard to what name it may be called by. The great fact still stands out that the compensation of a Justice of the Peace, who acts as a judge in the smaller class of cases, is paid by the litigants, while the compensation of the judge who tries and decides the great causes, is paid, not by the litigants, but by the taxes of the people. I care not in what language it may be presented; the fact stands out in bold relief, just the same, and I am in favor of extending the same principle that governs in the Justices' Courts to the higher courts. Let those who want to litigate pay for it.

Mr. JOHNSON. Certainly; so it is now; they pay the sheriff's and clerk's fees.

Mr. COLLINS. Let them pay the court expenses also. I can see no reason why we should require them to pay the clerk and sheriff, and not the judge. I see no good reason why a court fee should not be exacted in proportion to the amount of money involved in such suit, and I think it would be very unjust indeed to tax a man who comes before the court to enforce a claim of three hundred dollars, the same amount that you would if his claim were for three thousand, or thirty thousand, or three hundred thousand dollars. I insist that this court fee is correct in theory, and I am confident that it will work well in practice.

Mr. HAWLEY. I trust that the proposition to strike out the word "shall" and insert instead the word "may," will prevail. I want to see the language so modified as to leave this matter discretionary with the Legislature. Now, sir, it is, according to my experience and observation—and I appeal to attorneys who are familiar with the practice of the law, and the results of practice, to say whether it is not in accordance with their own—that in as many as two cases out of five, if not a greater proportion than that, and especially in actions of ejectment and other cases of that character, the plaintiff, though compelled to bring suit in order to recover his rights, nevertheless finds the defendant in such a condition that he cannot pay the costs, and they are therefore taxed against the prevailing party. He is obliged to pay all the costs of the clerk and the sheriff, and to make him pay all those costs, and then a docket fee in addition, would be extremely onerous and burdensome. Therefore I hope the amendment offered by the gentleman from Ormsby will prevail, or at any rate that we shall provide that no such tax shall be enforced against the prevailing party.

Mr. DeLONG. If the gentleman's interrogatory, as to cases where the defendant is unable to pay the costs, is addressed to me, I have to say in reply, that no matter whether the plaintiff recovers the costs or not, he still recovers the property, and if he is benefited by his suit, whilst I am not, I do not see why he should not pay the whole of the expenses of the court instead of making me pay a part. [Question, question!"]

[Mr. KINKEAD in the chair.]

Mr. JOHNSON, and others, demanded the yeas and nays on the amendment to strike out the word "shall," and insert instead the word "may."

Mr. HAWLEY. Is a further amendment now in order?

SEVERAL MEMBERS. Oh, no!—Question!

Mr. HAWLEY. I withdraw it.

The question was taken by yeas and nays on the amendment offered by Mr. Johnson, to strike out "shall" and insert "may," and the vote was—yeas, 8; nays, 12—as follows:

Yeas—Messrs. Brosnan, Crawford, Gibbs, Hawley, and Mr. President—5.

Nays—Messrs. Banks, Barton, Beatty, Chapin, Coffroth, Crouse, DeLong, Dunlap, Fawcett, Fenton, Kennedy, Kimball, Knight, McClinton, Murdock, Prosser, Sullivan, Warwick, and Wedemeyer—18.

So the amendment was not agreed to.

Mr. McCLINTON. Now I again move my amendment, which I temporarily withdrew in order that the amendment of the gentleman from Ormsby might be disposed of. I ask unanimous consent to amend the first paragraph of the section, so as to read as follows:

"The Legislature, at its first session, and from time to time thereafter, shall prescribe by law, that upon the institution of each action," etc.

The amendment was agreed to by unanimous consent.

Mr. BANKS. The word "provide," I think is better than "prescribe." I will move to substitute the word "provide" for "prescribe."

Mr. McCLINTON. Yes; that is better, certainly.

The amendment was agreed to by unanimous consent.

Mr. DuLONG. Now, is the word "civil" there—"civil action?"

The SECRETARY. No, sir.

Mr. DuLONG. I ask to have the word "civil" inserted before "action," so as to read—"upon the institution of each civil action, and other proceeding," etc.

The amendment was agreed to by unanimous consent.

Mr. DuLONG. It occurs again, I observe, further down. Let the word "civil" come in before "action," in the second instance—"and also upon the perfecting of an appeal in any civil action," etc. Will the Secretary read the section as it will then stand?

The SECRETARY read as follows:

SEC. 16. The Legislature, at its first session, and from time to time thereafter, shall provide by law that upon the institution of each civil action, or other proceedings, and also upon the perfecting of an appeal in any civil action or proceeding in the several courts of Record in this State, a special court fee or tax, to be fixed by law, shall be advanced to the clerks of said courts respectively, by the party or parties bringing such action or proceeding, or taking such appeal; and the money so paid in shall be accounted for by such clerks, and applied towards the payment of the compensation of the judges of said courts, as shall be directed by law.

Mr. DuLONG. That is right now.

The further amendment proposed by Mr. DeLong, (to insert the word "civil," in the second instance,) was agreed to by unanimous consent.

LEAVE OF ABSENCE.

Section 17 was read, as follows:

SEC. 17. The Legislature shall have no power to grant leave of absence to a judicial officer; and any such officer who shall absent himself from the State for upwards of ninety consecutive days, shall be deemed to have vacated his office.

No amendment was offered.

TERRITORIAL JUDGES AND COURTS CONTINUED.

Section 18 was read, as follows:

SEC. 18. No order that no future residence may subsist to the judges serving from the taking effect of this article, no judicial officer shall be superseded, nor shall the organization of the several courts be changed thereby, until the election and qualification of the several officers provided for in the same.

No amendment was offered.

CITY RECORDERS.

Mr. BROSNAN. My attention has been called, by the gentleman from Ormsby, (Mr. Johnson,) to the reading of Section 10, as it is now numbered. Will the Secretary read that section?

The SECRETARY read Section 10, as follows:

SEC. 10. No judicial officer, except Justices of the Peace, shall receive to his own use any fees or perquisites of office.

Mr. BROSNAN. That section is taken from the old Constitution, framed last year, in haec verba, but since that time a Recorder's Court has been established in Virginia City, and the Recorder is paid, I believe, by fees. This section, as it now reads, would, in my judgment, cut him off altogether from receiving any fees, and I therefore move to amend the section by inserting after "Justices of the Peace," the words "and Recorders of cities."

Mr. DuLONG. It would be better to say—"and City Recorders."

Mr. BROSNAN. Very well; let it read—"except Justices of the Peace, and City Recorders."

The amendment was agreed to by unanimous consent.

JUSTICES OF THE SUPREME COURT.

Mr. CHAPIN. I would like to hear Section 2 read again.

The SECRETARY read Section 2, as follows:

SEC. 2. The Supreme Court shall consist of a Chief Justice and two Associate Justices, a majority of whom shall constitute a quorum; provided, that the Legislature, by a majority of all the members elected to each branch thereof, may provide for the election of two additional Associate Justices, and if so increased, three shall constitute a quorum. The concurrence of a majority of the whole court shall be necessary to render a decision.

Mr. CHAPIN. I see that provision is there made for the addition of two associate justices, but I do not notice any provision for reducing the number again to three. My idea is, that in all probability this increase to five judges will be made at an early day, for now is the time, and for the next two or three years, when, if ever, five judges on the bench will be of great service to the State. If we are going to want them at any period in our history, it is at this period, and it is my opinion that we will need them for perhaps three, four, or possibly five years to come. After that, I doubt very much whether five judges will be needed. With that view, I move to refer this section to a special committee of three, with instructions to amend by inserting after the words "two additional associate justices," the words "with power to reduce the number again to two."

Mr. DeLONG. I want to know why the Legislature has not that power, without the amendment proposed? If the Legislature can pass a law increasing the number of judges, it can certainly repeal such law—there is no doubt of that—under the ordinary construction of statutes.

Mr. CHAPIN. I would very much prefer to have the power expressed.

The PRESIDENT *pro tem.* I suggest whether it would not be better to place this provision in the Schedule, as it seems to relate merely to a temporary matter?

Mr. CHAPIN. This is the proper place, sir; at the very point where provision is made for an increase.

Mr. MASON. I can see no necessity for this amendment. With my limited knowledge of the law, and I do not profess to have much legal knowledge, I am clearly of opinion that when a repealing or amending statute is itself repealed, the latter act revives and puts in force the former law. If that be so, the Legislature has the power referred to, without any amendment.

Mr. CHAPIN. I have had some conversation with the Chairman of the Judiciary Committee (Mr. Brosnan) on this subject, and he stated to me at the moment—to be sure, without much opportunity for thought on the subject—that he doubted the power of the Legislature, after having once increased the number of judges, again to reduce that number.

Mr. BROSNAN. If this amendment were adopted we would have this state of things, at any rate, that if the Legislature increase the number of judges, such increase must continue at least for six years; that is, the terms of office of the additional judges elected must be for six years, and during that time, of course, they could not be legislated out of office, because we have adopted a provision that their compensation shall not be increased or diminished during the term of office for which they are elected.

Mr. JOHNSON. That applies only to their salaries.

Mr. BROSNAN. But in my opinion the judges, once elected, cannot be legislated out of office during the term for which they have been elected.

Mr. BANKS. I like the section just as it stands now. Is the gentleman's proposition that we shall have three judges to start with, and then empower the Legislature to diminish that number?

Mr. CHAPIN. No, no!

The PRESIDENT *pro tem.* As it is now, we shall have three judges to start with, with power in the Legislature to increase the number to five, and the proposition of the gentleman from Storey is to give the Legislature further power, after the increase has once been made, to reduce the number again to three.

Mr. CHAPIN. That is it, exactly.

Mr. BANKS. Well, I do not quite understand the object of it.

Mr. FRIZELL. The motive of my colleague is certainly a good one, but inasmuch as the decrease suggested cannot be made after the Legislature has once provided for the election of the two additional associate justices, under six years, and as the Constitution could be amended, if deemed necessary, inside of that time, even admitting that the Legislature would not have the power, which I think they would have, to decrease the number at the expiration of that time, still, I do not perceive that any practical advantage is to be secured by the amendment. I would not set up my judgment against that of other gentlemen, but it seems to me very clear that the Legislature would have the power to reduce the number at the expiration of the terms of the incumbents, and at all events, in case of any real necessity for it, the Constitution can be amended so as to meet the exigency. There is time enough for that. Therefore, inasmuch as the sentence is harmonious and correct, as it now reads, and as I think we can get on just as well without the amendment, I shall vote against it.

Mr. CHAPIN. The section would be a great deal more harmonious to my ear, if it were so worded as to enable us to dispense with those two additional justices, whenever it is ascertained that they are not necessary, and thus save the State fourteen thousand dollars a year. That would have a very harmonious sound, indeed. I ask for the yeas and nays on the amendment.

The question was taken by yeas and nays on the motion to recommit with the instructions offered by Mr. Chapin, and the vote was—yeas, 4; nays, 18—as follows:

Yeas—Messrs. Banks, Chapin, Collins, and Mr. President—4.

Nays—Messrs. Belden, Brady, Brosnan, Crawford, Crowner, DeLong, Dunne, Friedell, Folsom, Gibson, Kennedy, Kinkead, Mason, McClinton, Proctor, Tagliabue, Warwick, and Wetherill—18.

So the amendment was not agreed to.

No further amendment being offered,—

The question was taken by yeas and nays on the final passage of the article, and the vote was—yeas, 21; nays, 1—as follows:

Yeas—Messrs. Banks, Belden, Brady, Brosnan, Chapin, Collins, Crawford, Crowner, DeLong, Dunne, Friedell, Folsom, Gibson, Kennedy, Kinkead, Mason, McClinton, Proctor, Tagliabue, Warwick, and Wetherill—21.

Nay—Mr. President—1.

So the article was passed.

MISCELLANEOUS PROVISIONS—PERPETUITIES.

[The President in the chair.]

Mr. DUNNE. Has the article entitled Miscellaneous Provisions been finally passed?

The PRESIDENT. Yes, sir.

Mr. DUNNE. I wish, then, to call attention to one matter which seems to have been overlooked. I do not see that any clause has been adopted in the Constitution, thus far, prohibit-

ing perpetuities. I was not aware that the article had been finally passed, and had a section drawn to be incorporated in it, which I will read:

SEC. — No perpetuities shall be allowed except for eleemosynary purposes.

I think that should be incorporated somewhere, because if there is no such prohibition, entailed estates may be created, the same as in England.

The PRESIDENT. I understand the article is in the hands of the Committee on Phraseology, and if there be no objection, the section can be sent to that committee, with instructions to embody it in the article.

The rules were suspended by unanimous consent for the purpose of allowing Mr. Dunne to introduce the proposed new section.

Mr. DeLONG. Let us adjourn. What have we got to do to-morrow? We can attend to this matter then, I suppose.

The PRESIDENT. This section ought to be adopted before the article goes to the Enrolling Committee.

Mr. DeLONG. Very well; it may be adopted, I understand, by unanimous consent.

The PRESIDENT. Does the gentleman from Humboldt desire to submit a motion in connection with the proposed additional section?

Mr. DUNNE. Yes, sir; I wish it to follow Section 3. I offer the following resolution:

Resolved, That the following section be and the same is hereby ordered inserted in Article XVI, entitled Miscellaneous Provisions, viz:

SEC. 4. No perpetuities shall be allowed, except for eleemosynary purposes.

The resolution was adopted by unanimous consent.

Mr. DeLONG. I move that the Convention now adjourn. I understand that it is not going to facilitate our business to sit any later to-night.

ELECTION ORDINANCE.

Mr. COLLINS. I have a report to make.

Mr. DeLONG. I withdraw the motion to adjourn.

Mr. COLLINS presented the following report:

MR. PRESIDENT:—Your select committee, comprising the undersigned, to which was referred the ordinance relative to voting, etc., respectfully reports the same back to the Convention, amended by substituting new matter for Sections 5 and 6, as follows:

SEC. 5. The judges and inspectors of said election shall carefully count each ballot, immediately after said election, and forthwith make duplicate returns thereof to the clerks of the said County Commissioners of their respective counties; and said clerks within fifteen days after said elections, shall transmit an abstract of the votes, including the soldiers' vote, as hereinafter provided, given for State officers, Supreme and District Judges, Representative in Congress, and three Presidential electors, inclosed in an envelope, by the most safe and expeditious conveyance, to the Governor of said Territory, marked "Election returns."

SEC. 6. Upon the receipt of said returns, including those of the soldiers' vote, or within twenty days after the election, if said returns be not sooner received, it shall be the duty of the Board of Canvassers, to consist of the Governor, United States District Attorney, and Chief Justice of said Territory, or any two of them, to canvass the returns, both civil and military, in the presence of all who may wish to be present, and if a majority of all the votes given upon this Constitution shall be in the favor, the said Governor shall immediately publish an abstract of the same, and make proclamation of the fact in some newspaper in said Territory, and certify the same to the President of the United States, together with a copy of the Constitution and ordinances. The said Board of Canvassers, after canvassing the votes of the said November election, shall issue certificates of election to such persons as were elected State officers, Judges of the Supreme and District Courts, Representative in Congress, and three Presidential electors. Thirty days after the President of the United States shall issue his proclamation declaring this State admitted into the Union on an equal footing with the original States, this Constitution shall thenceforth be ordained and established as the Constitution of the State of Nevada.

All of which is respectfully submitted.

JOHN A. COLLINS.

The report was accepted and the ordinance placed on file.

Mr. CHAPIN. I was desirous of working at least an hour longer to-night, but the Secretary has informed me that it will be impossible for him to prepare the article on the Judicial Department, so as to go out of his hands into the hands of the enrolling clerk, until after the adjournment. As it is quite important to have that article enrolled as early as possible, perhaps it will be as well to adjourn now.

Mr. WARWICK. I move that we adjourn.

SCHEDULE—PROBATE COURTS.

The PRESIDENT. I understand that it is the desire of the gentleman from Storey, (Mr. Brosnan,) to offer an additional section to the Schedule.

Mr. WARWICK. For that purpose I withdraw the motion to adjourn.

Mr. BROSNAN offered the following resolution:

Resolved, That the following section be and the same is hereby ordered inserted in the article entitled Schedule, as Section 20.

SEC. 20. All cases, both civil and criminal, which may be pending and undetermined in the Probate Courts of the several counties at the time when, under the provisions of this Constitution, said Probate Courts are to be abolished, shall be transferred to, and determined by the District Courts of such counties respectively.

The resolution was adopted by unanimous consent.

Mr. WARWICK. I now renew the motion to adjourn.

The question was taken, and the motion was agreed to.

Accordingly, at twenty minutes before ten o'clock, P. M., the Convention adjourned.

TWENTIETH DAY.

CARSON, July 28, 1864.

The Convention met at nine o'clock, A. M., and was called to order by the President.

The roll was called, and all the members responded except the following: Messrs. Ball,

Banks, DeLong, Earl, Fitch, Haines, Hervy, Hudson, Jones, Lockwood, Morse, Nourse, Parker, Shotwell, Todd, Wellington, and Williams, President, 21; absent 17.

Prayer was offered by the Rev. Mr. NIMS.

The journal of yesterday was read, corrected, and approved.

LEAVE OF ABSENCE.

Mr. BRADY. I desire to ask indefinite leave of absence from to-day at noon.

The PRESIDENT. It is quite evident that the Constitution will not be completed to-day, and if any more members leave us, I am apprehensive that we shall not have a quorum to-morrow.

Mr. BRADY. There are several members in town who will be present to-morrow, I understand.

The PRESIDENT. The gentleman from Washoe (Mr. Nourse) is the only absent member that I know of in town, who will probably be here to-morrow, and, as all of us are aware, when our number is reduced below twenty we are without a quorum. At no time yesterday did we have in attendance more than twenty-four members, I believe.

Mr. BROSNAN. And some whom we had yesterday are away to-day.

The PRESIDENT. I understand, also, that one of the members from Humboldt, (Mr. Dunne,) and the three delegates from Esmeralda, propose leaving the Convention immediately.

Mr. HAWLEY. I think we may get through our work by to-morrow at noon.

The PRESIDENT. The enrolling yet to be done is all there is to prevent it. It would be very unfortunate, however, if we were to find ourselves in such condition as to be unable to complete our labors.

Mr. BRADY. Will not Messrs. DeLong and Banks be here?

Mr. DUNNE. My colleague (Mr. Banks) will be here at two o'clock. He desires leave of absence only till two o'clock.

The PRESIDENT. I think there will be no trouble about a quorum to-day; the question is, who will be in attendance to-morrow?

Mr. McCLINTON. Unless I start for home to-morrow morning, I cannot go till Friday, and I am very anxious, indeed, to get home. If it is possible, therefore, I should like to start home in the morning, but I will not hazard the chances of getting a quorum in the Convention by leaving.

The PRESIDENT. I would like to inquire of the other members from Esmeralda, what their views are in regard to remaining.

Mr. WETHERILL. I am in very much the same position as my colleague who has just spoken. I should like very much to go, but at the same time, I would not leave the Convention without a quorum. If a quorum can be obtained without me, I shall be extremely glad to go; if not, I will stay and take the chances.

Mr. MANN. I did not propose to stay till Friday; but, however, my time is like a setting hen's—it isn't worth a cent—[merriment]; so I think I will stay, if it is necessary.

Mr. BRADY. I am in the same fix as the gentleman from Esmeralda, (Mr. McClinton); I would not leave, if I found that the Convention would be without a quorum in consequence.

The question was taken, and leave of absence was granted to Mr. Brady, in accordance with his request.

The PRESIDENT. The Enrolling Clerk has informed me that several sheets which he had completed, became wet and destroyed by reason of the storm of yesterday.

QUESTION OF PRIVILEGE.

Mr. DUNNE. I desire to rise to a question of privilege, in regard to a report of our proceedings in the *Virginia Union*. I said the last time I was on the floor for such a purpose that I would not endeavor to correct one of the reporters again, unless it was a case of life and death; but this refers to the proceedings on the dueling question, and so comes pretty near a question of life and death, at any rate. By a very slight transposition of words, I am made by the reporter of the *Union* to take exactly the opposite ground from what I really did take, in regard to persons being eligible to office who may have fought a duel out of the State, subsequent to the adoption of the Constitution. His report says:

"Mr. Dunne, after calling attention to the fact that the person who had fought a duel in California since the adoption of the Nevada Constitution, would be prohibited by Section — from exercising the rights of an elector, moved that it be referred to a select committee, consisting of Messrs. Banks, Nourse, and Warwick, with instructions to amend so as to prohibit persons who had fought a duel out of the State, after the adoption of the Constitution, as well as within the State, from being eligible to office."

Now the point was this, that a person who, while living elsewhere, had fought a duel outside of this State, although after the adoption of the Constitution, might be eligible to office here, but at the same time the oath would prevent him from entering upon the duties of the office to which he might be elected, unless he committed perjury; that is, although he might be eligible, under one section, and might be elected, yet he could not take the oath prescribed in the preceding section, which required him to swear that he had not fought a duel since the adoption of the Constitution. I considered that the two sections conflicted, and wishing to make them harmonize with each other, I moved that the oath be amended, so that the person who might have fought a duel outside of the State, subsequent to the adoption of the Constitution, would not be required to swear, as then prescribed in the oath, that he had not fought a duel at all, but that he had not fought a duel "while a resident of the State of Nevada." This report would make it appear that it was my desire to exclude such

persons from eligibility to office, which was not the fact.

ENROLLMENT OF THE CONSTITUTION.

Mr. KENNEDY. I wish to inquire if the Enrolling Committee cannot employ additional force, so as to complete the enrollment of the Constitution to-day? As I understand the matter, we have appointed a committee to have the whole instrument re-enrolled after our adjournment.

Mr. GIBSON. That will not be necessary, except in cases where amendments are made.

Mr. KENNEDY. I understood that the whole was to be re-enrolled, and that copy, I think, ought to be executed with great care, while the appearance of the copy which is now being enrolled, is of comparatively little consequence. I think if the committee employ sufficient force we may get through to-night.

Mr. HAWLEY. I have always been under the impression that the original copy of an enrolled bill, as it came from the hands of the Enrolling Clerk, was the copy to which reference would be made in the event of any litigation growing up under the instrument, and I suppose the rule would be the same in regard to our Constitution. But whether I am correct in that or not, I do not think any advantage is to be gained by the employment of additional clerks. One great object of the enrollment is to leave no room for interlineations, and if we divide the labor among several clerks, that object is necessarily defeated. It is important, too, that the whole instrument shall present a neat and uniform appearance. If it is the sense of the Convention, however, that we should employ another clerk, we can do so.

The PRESIDENT. I do not think it will be possible to finish the work before the day after to-morrow, unless additional clerical force is employed.

Mr. CHAPIN. Is proper attention now being given to the work of enrolling?

Mr. HAWLEY. I went to the Enrolling Clerk's office early this morning. I did not find him in, but I saw a portion of his work which had been done in a workmanlike manner, and I found another portion which had evidently been ruined on. I saw Mr. Van Winkle subsequently, at about half-past seven o'clock, and he then assured me that he would immediately go to work and replace the damaged sheets. He said he was only waiting for the engrossed copy of the article on Judicial Department, and that, together with the Schedule, and the Ordinance providing for elections, comprises all remaining to be enrolled. If the Committee on Engrossment can report the judicial article now, I think it can be enrolled by two o'clock.

The PRESIDENT. I do not believe it can be done before seven o'clock. The clerk writes a beautiful hand, but very slowly, and I am confident that it will take him till six or seven o'clock.

Mr. KENNEDY. In order to test the sense of the Convention, I will move that the Committee on Enrollment be instructed to employ such additional clerical force as may be necessary to finish the enrollment of the Constitution by ten o'clock to-night.

Mr. CHAPIN. Some of the sheets which have been damaged by rain may still be saved, perhaps. One object of the committee which has been appointed, I suppose, is to guard against such accidents. If they are not damaged so much that they cannot be read, the committee can report them, and then it will be the duty of the special committee to have them re-enrolled.

Mr. HAWLEY. I think it probable that those sheets are all replaced by this time.

The PRESIDENT. I am very sure they are not.

Mr. KINKEAD. If gentlemen will suspend the discussion a few minutes, I will report three articles from the Committee on Phraseology, which will give the Enrolling Clerk something to do.

The PRESIDENT. I had some experience on this subject in the Convention of last year, and I remember that when we had mainly completed our labors we were delayed two or three days on account of the enrollment. We can employ several clerks, and let one enroll one article, another a different one, and so on. I think we can procure the services of two or three competent gentlemen now engaged in Secretary Clemens' office, who will cheerfully assist in the enrollment.

The question was taken on the motion of Mr. Kennedy, and it was agreed to.

PHRASEOLOGY.

[Mr. COLLIER in the chair.]

Mr. KINKEAD, from the Committee on Phraseology and Arrangement, submitted the following report:

MR. PRESIDENT:—Your Committee on Phraseology have had under consideration Articles VII, XI, and XVI, of the Constitution, and beg leave to report the following corrections and alterations:

In Section 1 of Article VII, after the word "Governor," in the fourth line from the bottom, insert "or Lieutenant Governor."

Section 2 of same article, strike out the words "under this State Government," in third line.

Section 3, same article, strike out the words "said county," in seventh line.

In Section 5, Article XI, strike out the words "no ot," and insert the words "deem necessary," in sixth line.

Same section, strike out the word "common" before "schools" in the eighth line.

In Section 7, same article, substitute the word "constitute" for "be," in sixth line.

In Section 8, strike out "the," where it occurs in the sixth line.

Insert in same section, after the word "lost," in fourth line from bottom, the words "or misappropriated."

In same section, third line from bottom, insert the word "principal" in lieu of "capital."

They also recommend the insertion of the words "(if so sold)"—in parentheses—after the word "enter," in last line of Section 3 of Article XVI; and

add to the section the words, "(if an affirmation,) under the pains and penalties of perjury."

Also, strike out the word "and," where it occurs between "1861" and "1875," in Section 13, Article XVI.

All of which is respectfully submitted.

J. E. KINKEAD, Chairman.

The PRESIDENT pro tem. If there is no objection, these amendments will be considered in their order, and each section read with its proposed amendments, so as to be understood by every member. The Secretary will read the amendments, and the sections or clauses, as amended.

The SECRETARY. The first amendment is—

In Section 1 of Article VII, after the word "Governor," in fourth line from the bottom, insert "or Lieutenant Governor."

The clause will then read:

"The Chief Justice of the Supreme Court shall preside over the Senate while sitting to try the Governor or Lieutenant Governor upon impeachment."

The next amendment is—

"Section 2, same article, strike out the words 'under this State Government,' in third line."

It will then read:

"The Governor, and other State and judicial officers, except Justices of the Peace, shall be liable to impeachment for misdemeanor, or malfeasance in office."

Mr. KINKEAD. These words made rather a bad sentence, and the committee did not see that they meant anything.

Mr. DeLONG. I cannot see how the section could have reference to any other officers than those "under this State Government."

Mr. BREWSTER. The words are clearly superfluous.

The SECRETARY. The next amendment is—

"Section 3, same article, strike out the words 'and county,' in seventh line."

The sentence will then read:

"For any reasonable cause, to be entered on the journals of each House, which may or may not be sufficient grounds for impeachment, the Chief Justice and Associate Justices of the Supreme Court, and Judges of the District Courts, shall be removed from office on the vote of two-thirds of the members elected to each branch," etc.

The next are as follows:

"In Section 8, Article XI, strike out the words 'see fit,' and insert the words 'deem necessary,' in sixth line."

Same section, strike out the word "common," before "schools," in eighth line.

The first part of the section will then read as follows:

"The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may deem necessary; and all professors in said University, or teachers in said schools, of whatever grade, shall be required to take and subscribe to the oath, as prescribed in Article XVI of this Constitution."

The next amendment is in Section 7, of the same article, to substitute the word "constitute" for "be," in the sixth line, so as to read:

"The Governor, Secretary of State, and the Superintendent of Public Instruction, shall, for the first four years, and until their successors are elected and qualified, constitute a Board of Regents," etc.

The next amendments are in Section 8, of the same article—to strike out "the" where it occurs in the sixth line, so as to read—"make it most effective and useful," instead of "make it the most effective and useful." Also, in the same section, to insert after the word "lost," in the fourth line from the bottom, the words "or misappropriated;" and in the third line from the bottom, the word "principal," in lieu of "capital." The concluding portion of the section will then read:

"And the Legislature shall provide that if through neglect, or any other contingency, any portion of the fund so set apart shall be lost or misappropriated, the State of Nevada shall replace said amount so lost or misappropriated to said fund, so that the principal of said fund shall remain forever undiminished."

THE ENROLLMENT—AGAIN.

[The PRESIDENT in the chair.]

The PRESIDENT. I will state, for the information of members of the Convention, that the gentleman from Douglas, (Mr. Hawley,) and I went into the office of the Secretary of the Territory, and although we found his clerks very busy with some pressing work, yet two or three of them expressed a willingness to assist in the enrollment, and will be ready to proceed with the work as soon as we are ready for them.

Mr. TAGLIABUE. Do they think they can complete the enrollment this evening?

The PRESIDENT. They will work at it as diligently as they can. The Secretary himself is absent, and one of the clerks does not feel authorized, in his absence, to leave his other duties and assist in the enrollment, but the other two will do do.

PHRASEOLOGY—AGAIN.

The Convention resumed the reading and consideration of the amendments reported by the Committee on Phraseology.

The SECRETARY. The next amendment is in the oath, in Section 2 of Article XVI. The committee propose to insert after "enter," in the last line, the words "(if an oath);" and to add to the section the following: "(if an affirmation), under the pains and penalties of perjury." The concluding sentence will then read:

"And further, that I will well and faithfully perform all the duties of the office of —— on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury."

The next and last amendment is—

Also strike out the the word "and," where it occurs before "1861" and "1875," in Section 13, Article XVI.

Mr. CHAPIN. Let us hear how that will read, as amended. Sometimes these little words make a wonderful slight of difference. For instance, in one place I should like to strike out the word "Carson" and insert "Virginia," and the change of that one word would remove the Capital.

Mr. DeLONG. A capital idea.

Mr. KINKEAD. It should be a capital offense. [Merriment.]

The SECRETARY read Section 13, as proposed to be amended, as follows:

SEC. 13. The enumeration of the inhabitants of this State shall be taken, under the direction of the Legislature, if deemed necessary, in the years 1865, 1875, and every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States in the year 1870, and every subsequent ten years, shall serve as the basis of representation in both houses of the Legislature.

EDUCATION—SCHOOL FUND.

Mr. McCLINTOCK. In Section 7, of the article on Education, the language is, that the Board of Regents shall manage the affairs of the University, etc., "under such regulations as may be provided by law." It occurs to me that it would read better to say, "as may be prescribed by law."

The PRESIDENT. The question now presented is simply on the amendments reported by the Committee on Phraseology. It is in order, of course, to amend the committee's amendments, but separate and independent amendments cannot be made at this time. I will suggest, however, that at a subsequent stage, amendments may be adopted by unanimous consent.

Mr. DUNNE. I call attention to the amendment in the article on Education, to insert "principal" in lieu of "capital," in Section 8. It did read in the engrossed copy, "principal and interest," and the point was made whether, if we were to preserve the interest of the school fund undiminished, it could ever be taken or used, in any manner. Therefore, as the real object was to preserve undiminished both the principal and interest, up to a certain time, before commencing to expend it for its legitimate purposes, to include the matter in one word, and in order to tie up the interest also for a certain period, as I understood, the word "capital" was inserted, instead of "principal and interest," both being included in that word. The Committee on Phraseology now recommend that the word "principal" only, be used.

Mr. KINKHEAD. The committee supposed that the provision was intended to include only the original amount invested in this fund, and referring only to that the committee considered that "principal" was a more appropriate word than "capital," the latter word being used, as a general thing, only in reference to commercial transactions.

Mr. COLLINS. I will state that the law of Congress under which the State is to receive from the General Government those ninety thousand acres of land—thirty thousand acres for each member of Congress—makes it obligatory that the proceeds of that land shall be set apart and invested exclusively for the benefit of a college in which certain specified branches of knowledge are to be taught. The obligation applies to the entire proceeds of that land, which includes both principal and interest, and it requires the State to be responsible for it. I remember that the section was originally reported with the words "principal and interest," but after a discussion of considerable length, the word "capital" was substituted by the Convention as being preferable. It occurs to me, however, that this word "principal" is certainly to be preferred.

Mr. DUNNE. May I ask the gentleman from Storey (Mr. Collins) a question? Was it the intention that the interest should be allowed to accumulate and go in with the principal? I understood it was the design of the Committee on Education that the principal and interest should remain undiminished, in order to allow a certain amount of the interest that would accrue to accumulate for a given time, before the expenditure of the money should commence. If that was not the desire or intention of the committee, then I can see no force in the use of the word "capital" instead of "principal." Believing that to be the intention of the committee, understanding that there was a certain principal fund to be obtained, and the interest on that to accumulate for a certain length of time, and wishing to preserve that fund, and the interest upon it up to that time, undiminished, I moved to make the amendment which was adopted, inserting the word "capital" instead of "principal." Now if the interest is not to go into and become a part of the capital fund, then that amendment was incorrect, and should not have been made in the first place.

Mr. COLLINS. The original intention of the committee, as has often been stated, was that the interest should accumulate with the principal, and should be set aside and invested from time to time for the benefit of the agricultural and mechanical departments of the college; but the Convention felt indisposed to tie up more than the capital itself in that manner—that is, the original sum, or the principal. Therefore, I do not see the force of the word "capital," because if it was intended to tie up both the principal and interest, it was not in accordance with the design of the Convention, which was to hold the original sum only, allowing the interest to be at the disposal of the Board of Regents, to be appropriated according to the judgment and discretion of that Board, under the provisions of the law of Congress granting the ninety thousand acres to this State. It appears to me that "principal" is the better word.

Mr. DUNNE. I am satisfied with that explanation, and see that I was in error in introducing the amendment originally.

Mr. CHAPIN. Now I move that the entire report of the Committee on Phraseology be adopted.

The PRESIDENT. The question will be first on the amendments reported to Article VII, entitled Impeachment and Removal from Office.

The question was taken, and the amendments to Article VII were agreed to.

The PRESIDENT. The next question is on the amendments to Article XI, entitled Education.

Mr. McCLINTON. I do not want to waste the time of the Convention, but I would like to see this article, especially, made as correct in its grammatical construction as it is possible to make it, in the short time allowed for its consideration. I certainly do think that the language in Section 7, where it says "under such regulations as may be provided by law," is not as good as it would be to say "as shall be prescribed by law." That is the word which is almost universally employed in that connection — "the Legislature shall prescribe." If one goes to a physician when he is in ill-health, the physician does not "provide" for him; he "prescribes."

The PRESIDENT. The amendment which the gentleman suggests is not contained in the report of the committee; and the gentleman will bear in mind that the article may be subject to amendment hereafter.

Mr. McCLINTON. Very well.

The question was taken on the amendments reported to Article XI, and they were agreed to.

The question was next taken on the amendments reported by the Committee on Phraseology to Article XVI, entitled Miscellaneous Provisions, and they were agreed to.

Mr. DUNNE. I would inquire whether the section prohibiting perpetuities, adopted as Section 4, by resolution of the Convention, has been incorporated in this article?

Mr. KINKEAD. It has, in obedience to the order of the Convention. We found no error in it, and therefore there was no occasion to refer to it in this report.

Mr. BROSNAN. I would inquire if Section 6, as printed, limiting the aggregate number of members of the Legislature to seventy-five, has been transferred from the article?

The SECRETARY. No, sir; it is here.

OFFICIAL MINUTES OF THE CONVENTION.

Mr. CHAPIN offered the following resolution:

Resolved, That the minutes of this Convention, and the Constitution when finally enrolled, be deposited with the Secretary of Nevada Territory for safe keeping; provided, that the Official Reporter of this Convention shall be allowed the use of the said minutes while preparing his report of the debates and proceedings of this Convention.

The question was taken, and the resolution was adopted.

THE DEBATES AND PROCEEDINGS.

Mr. CHAPIN. I have another resolution to offer.

The SECRETARY read the resolution, as follows:

Resolved, That the volume or volumes of the debates and proceedings of the Convention, as provided for in the Schedule of the Constitution shall contain:

1st. An introduction, containing a brief outline of the history of the Territory of Nevada, to be prepared by the Hon. C. M. Brosnan.

2d. The Organic Act of the Territory of Nevada.

3d. The Enabling Act, providing for this Convention.

4th. The Enrolled Copy of the resolutions and debates of the Convention.

5th. The Debates and Proceedings of the Convention (not including debates on points of order).

6th. The Constitution, as finally adopted.

7th. The Index.

Mr. WARWICK. I do not know as it would be exactly right in this resolution, and yet I do not see why it is not perfectly proper to provide for giving at least one copy of the debates to each member of the Convention.

The PRESIDENT. A section of the Schedule, which we have adopted, provides for the publication of six hundred copies; and I think the Legislature will give one or two copies to each member of the Convention, in token of his services.

Mr. WARWICK. I think it very possible that the first Legislature will distribute them all among themselves and their friends.

The PRESIDENT. Provision has already been made in the Schedule for the publication of the debates and proceedings, and the compensation of the reporter, and this resolution is in conformity with the constitutional provision already adopted.

Mr. WARWICK. I should like to reach that matter in some way.

The question was taken, and the resolution was adopted.

THE SCHEDULE.

Article XVII, entitled Schedule, was taken up, on its third reading.

Mr. McCLINTON. I have an impression that there is one section of this article which was not read yesterday.

The SECRETARY. There is only one section that was not read yesterday, from a half a dozen to a dozen times; that is the section which was inserted last night on the motion of the gentleman from Storey (Mr. Brosnan.)

The PRESIDENT. That section was adopted, and thereupon transferred to this article.

The SECRETARY read Sections 1 to 13, inclusive, as follows:

SECTION 1. That no inconvenience may arise by reason of a change from a Territorial to a permanent State Government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, including counties, towns, and cities, shall continue as if no change had taken place; and all process which may issue under the authority of the Territory of Nevada, previous to its admission into the Union as one of the United States, shall be as valid as if issued in the name of the State of Nevada.

SEC. 2. All laws of the Territory of Nevada, in force at the time of the admission of this State, not repugnant to this Constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the Legislature.

SEC. 3. All fines, penalties, and forfeitures accruing to the Territory of Nevada, or to the people of the United States in the Territory of Nevada, shall inure to the State of Nevada.

SEC. 4. All recognizances heretofore taken, or which

may be taken before the change from a Territorial to a permanent State Government, shall remain valid, and shall pass to, and may be prosecuted in the name of the State; and all bonds executed to the Governor of the Territory, or to any other officer or court in his or their official capacity, or to the people of the United States in the Territory of Nevada, shall pass to the Governor, or other officer or court, and his or their successors in office, for the uses therein respectively expressed, and may be sued on and recovered as occasion may require; and all property, real, personal, or mixed, and all judgments, bonds, securities, choses in action, claims and debts of whatsoever description, and all records and public archives of the Territory of Nevada, shall inure to and vest in the State of Nevada, and may be sued for and recovered in the same manner, and shall be used by and in the name of Nevada, as the same would have been by the Territory of Nevada. All criminal prosecutions and penal actions which may have arisen, or which may arise before the change from a Territorial to a State Government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the State. All offenses committed against the laws of the Territory of Nevada before the change from a Territorial to a State Government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Nevada with like effect as though such change had not taken place, and all penalties incurred shall remain the same as if this Constitution had not been adopted. All actions at law and suits in equity, and other legal proceedings, which may be pending in any of the courts of the Territory of Nevada at the time of the change from a Territorial to a State Government, shall be continued and transferred to, and may be prosecuted to judgment and execution in any court of the State which shall have jurisdiction of the subject matter thereof; and all books, papers, and records, relating to the same, shall be transferred in like manner to such court.

Sec. 5. Until otherwise provided by the Legislature, the apportionment of Senators and Assemblymen in the different counties shall be as follows, to wit: Storey County, four Senators and twelve Assemblymen; Douglas County, one Senator and two Assemblymen; Esmeralda County, two Senators and four Assemblymen; Humboldt County, two Senators and three Assemblymen; Lander County, two Senators and four Assemblymen; Lyon County, one Senator and three Assemblymen; Lyon and Churchill Counties, one Senator jointly; Churchill County, one Assemblyman; Nye County, one Senator and one Assemblyman; Washoe and Roop Counties, two Senators and three Assemblymen; Ormsby County, two Senators and three Assemblymen.

Sec. 6. All debts and liabilities of the Territory of Nevada, lawfully incurred, and which remain unpaid at the time of the admission of this State into the Union, shall be assumed by, and become the debt of the State of Nevada.

Sec. 7. The term of State officers, except judicial, elected at the first election under this Constitution, shall continue until the Tuesday after the first Monday of January, A. D. 1867, and until the election and qualification of their successors.

Sec. 8. The Senators to be elected at the first election under this Constitution shall draw lots, so that the term of one-half the number, as near as may be, shall expire on the day succeeding the general election in A. D. 1866, and the term of the other half shall expire on the day succeeding the general election in A. D. 1868; provided, that in drawing lots for all Senatorial terms, the Senatorial representation shall be allotted so that in the counties having two or more Senators the terms thereof shall be divided, as near as may be, between the long and short terms.

Sec. 9. At the general election in A. D. 1864, and thereafter, the term of Senators shall be for four years from the day succeeding such general election, and members of Assembly for two years from the day succeeding such general election, and the terms of Senators shall be allotted by the Legislature so long and short terms, as hereinbefore provided, so that one-half the number, as nearly as may be, shall be elected every two years.

Sec. 10. The term of members of the Assembly elected at the first election under this Constitution, shall expire on the day succeeding the general election in A. D. 1866, and the terms of those elected at the general election A. D. 1867 shall expire on the day succeeding the general election A. D. 1868.

Sec. 11. The first regular session of the Legislature shall commence on the second Monday of December, A. D. 1864, and the next regular session of the same body shall commence on the first Monday of January, A. D. 1866, and the third regular session of the Legislature shall be the first of the biennial sessions, and shall commence on the first Monday of January, A. D. 1867, and the regular sessions of the Legislature shall be held thereafter biennially, commencing on the first Monday of January.

Sec. 12. All county officers, under the laws of the Territory of Nevada at the time when this Constitution shall take effect, whose offices are not inconsistent with the provisions of this Constitution, shall continue in office until the first Monday of January, A. D. 1867, and until their successors shall be elected and qualified, and all township officers shall continue in office until the expiration of their terms of office, and until their successors are elected and qualified. *Provided*, that the Probate Judges of the several counties respectively, shall continue in office until the election and qualification of the District Judges of the several counties or judicial districts. *And further provided*, that the terms of the present county officers of Lander County shall expire on the first Monday of December, 1864, and until the election and qualification of the successors of such officers as are not inconsistent with the provisions of this Constitution. The several county officers of said County of Lander shall be chosen at the general election in November, A. D. 1864.

LANDER COUNTY OFFICERS.

Mr. CHAPIN. It seems to me the last proviso, in the section just read, does not sound exactly right. It says—"the terms of the present county officers of Lander County shall expire on the first Monday of December, 1864, and until the election and qualification of the successors of such officers." They are to expire at the time specified, and until something else happens.

The PRESIDENT. It is so in the original; the engrossment is correct.

Mr. DeLONG. It is bad grammar, at any rate.

Mr. PROCTOR. I will move to insert "hold office," instead of "expire."

Mr. DUNNE. Suppose we pass the section temporarily, and let the gentleman from Lander (Mr. Warwick) give his attention to it.

Mr. WARWICK. It seemed to me yesterday, that there was some little difficulty about that language, as it was read at the desk.

Mr. CHAPIN. Let us proceed with the reading, and give the gentleman from Lander an opportunity to prepare an amendment.

The PRESIDENT. If there is no objection that course will be taken. The Secretary will proceed.

THE SCHEDULE—CONTINUED.

Sections 13 and 14 were read, as follows:

Sec. 13. The Governor, Secretary, Treasurer, and Superintendent of Public Instruction of the Territory of Nevada, shall each receive the duties of their respective offices after the admission of this State into the Union, and until the time designated for the qualification of the above named officers to be elected under the State Government; and the Territorial officers shall continue to discharge the duties of their offices until the time appointed for the qualification of the State Controller; provided, that said officers shall each receive the salaries and be subject to the restrictions and conditions as provided in this Constitution; and provided further, that none of those officers shall receive to his own use any fees or perquisites for the performance of any duty connected with his office.

Sec. 14. The terms of the Supreme Court shall, until otherwise by law, be held at such times as the Judges of said court, or a majority of them, may appoint. The first terms of the several District Courts, (except as hereinafter mentioned,) shall commence on the first Monday of December, 1864. The first term of the District Court in the Fifth Judicial District shall commence on the first Monday of December, 1864, in the County of Ormsby, and shall commence on the first Monday of January, 1865, in the County of Churchill. The terms of the Fourth Judicial District shall, until otherwise provided by law, be held at the county seat of Washoe County, and the first term thereof to be held on the first Monday of December, 1864.

Mr. DUNNE. It is scarcely necessary, perhaps, to make a formal motion, but as we have used the letters "A. D." before the year throughout the entire instrument, I think we had better insert them in this section, for the sake of uniformity, if nothing else.

Mr. CHAPIN. There are four places in the section where a year is mentioned without these initials.

Mr. DUNNE. I move that the Secretary insert the letters in every case where a year is mentioned.

The PRESIDENT. If there is no objection, the Secretary will make that amendment in each case.

Sections 15, 16, and 17, were read, as follows:

Sec. 15. The Governor, Lieutenant-Governor, Secretary of State, State Treasurer, State Controller, Attorney-General, Surveyor-General, Clerk of the Supreme Court, and Superintendent of Public Instruction, to be elected at the first election under this Constitution, shall each be qualified and enter upon the duties of their respective offices on the first Monday of December succeeding their election, and shall continue in office until the first Tuesday after the first Monday of January, A. D. 1867, and until the election and qualification of their successors respectively.

Sec. 16. The Judges of the Supreme Court, and District Judges, provided to be elected at the first election under this Constitution, shall be qualified and enter upon the duties of their respective offices on the first Monday of December succeeding their election.

Sec. 17. All officers of State, and District Judges, first elected under this Constitution, shall be commissioned by the Governor of this Territory, which commissions shall be countersigned by the Secretary of the same, and shall qualify before entering upon the discharge of their duties, before any officer authorized to administer oaths under the laws of this Territory; and also the State Controller and State Treasurer shall, before they qualify and enter upon the discharge of their duties, execute and deliver to the Secretary of the Territory an official bond, made payable to the people of the State of Nevada, in the sum of thirty thousand dollars each, to be approved by the Governor of the Territory; and shall also execute and deliver to the Secretary of State such other or further official bond or bonds as may be required by law.

OFFICIAL BONDS.

Mr. CHAPIN. "To be approved by the Governor of this Territory," in the way Section 17 reads in the enrolled copy. I will move to so amend it, however, as to read "to be approved by the Governor of the Territory of Nevada."

The PRESIDENT. I call the attention of the Convention, also, to the fact that the language requiring the Controller and Treasurer to give bonds, is liable to the construction, and probably that construction would be given it, that it is too general. It does not provide that they shall each give bonds, respectively. I suggest that the words "each respectively" should be inserted in that sentence.

Mr. BROSNAN. To come in after the word "shall;" it would be a very proper amendment.

Mr. CHAPIN. I will move that amendment, then, so that it will read—"and also the State Controller and State Treasurer shall each respectively, before they qualify and enter upon the discharge of their duties," etc.

Mr. DUNNE. How would it do to say "severally?"

Mr. CHAPIN. I do not like that so well.

Mr. BROSNAN. Then you will want to strike out the word "each," where it occurs in the last clause, before the words "to be approved."

Mr. CHAPIN. I will include that also. I move to amend the last clause of the section, so that it will read as follows:

"And also the State Controller and State Treasurer shall each respectively, before they qualify and enter upon the discharge of their duties, execute and deliver to the Secretary of the Territory of Nevada an official bond, made payable to the people of the State of Nevada, in the sum of thirty thousand dollars, to be approved by the Governor of the Territory of Nevada, and shall also execute and deliver to the Secretary of State such other or further bond or bonds as may be required by law."

Mr. KINKEAD. It appears to me that the provision, that it shall be made payable to the people of the State of Nevada, is hardly necessary.

The PRESIDENT. This applies only to the officers first elected. It is designed that the bonds of their successors, who will come into office after the State is fully organized, shall be established by law.

The question was taken on the amendment proposed by Mr. CHAPIN, as modified, and it was agreed to.

LANDER COUNTY OFFICERS—AGAIN.

Mr. WARWICK. I have prepared a substitute for the last proviso in Section 12, which I will offer. I ask the Secretary to read it.

The SECRETARY read, as follows:

"*Provided*, that the election for all the county officers and Probate Judge of Lander County shall take place at the next general election, to be holden in the month of November, A. D. 1864, at which time their successors shall be elected; but the present incumbents shall hold their offices till the first Monday of December, A. D. 1864."

The PRESIDENT. That will not do, without excepting the Probate Judge. The Probate Judges are continued in office until the District Judges are elected; but you do not intend that a successor of the Probate Judge in Lander County shall be elected.

Mr. WARWICK. I will modify that portion, so as to read:

"*Provided*, that the election for all the county officers of Lander County, except Probate Judge, shall take place," etc.

The PRESIDENT. Can you change the time of election as to a part of the officers, without changing it as to the whole?

Mr. WARWICK. Will the Secretary read the section again? It is very complicated.

Mr. GIBSON. You might say, "who shall hold their offices."

The SECRETARY read Section 12, as engrossed.

Mr. DUNNE. Is there not a general provision that all county officers, with the exception of the Probate Judges, shall hold until the first Monday in January, 1865?

The PRESIDENT. Until the first Monday in January, 1867, except in Lander County.

Mr. WARWICK. That is the reason why this proviso is necessary.

The PRESIDENT. In Lander County the election would not occur, under the territorial laws, until September, 1865, and this proviso would shorten the term of office of the present incumbents, ten or eleven months.

Mr. DUNNE. I inquire if there is anything which limits the term of these officers elected? When are they to go out of office?

The PRESIDENT. I think as it now reads they are continued in office till January, 1865.

Mr. WARWICK. No, sir; till the first Monday of December, 1864.

Mr. DUNNE. But how as to those who are elected to succeed them? It should be provided that they shall go out of office when the other county officers do.

The PRESIDENT. The Secretary will read the section again.

The SECRETARY again read Section 12, and the proposed amendment, as modified.

Mr. WARWICK. Now I begin to see where that seems a little cloudy. The parenthesis in the middle is not necessary, and by striking that out, it will make it clearer and better. The proviso should read:

"*Provided, further*, That the terms of the present county officers of Lander County shall expire on the first Monday of December, 1864, and the several county officers of said County of Lander shall be chosen at the general election in November, A. D. 1864."

Mr. TAGLIABUE. If you change "and" to "or," would not that do? Then it would read "shall expire on the first Monday of December, 1864, or until the election and qualification," etc.

Mr. WARWICK. Perhaps it would. It is "and" now.

The PRESIDENT. I think, on the contrary, that "and" is necessary in that connection, because the officers are elected perhaps a month or more before they are qualified.

Mr. TAGLIABUE. My suggestion does not refer to the second "and."

Mr. WARWICK. I will offer the substitute which I have sent up. Will the Secretary read it again.

The SECRETARY again read Mr. Warwick's amendment, as modified.

The PRESIDENT. Then, in order to meet the objection raised by the gentleman from Humboldt, (Mr. Dunne,) it will be necessary to add a further provision, that the terms of those elected in December, 1864, shall continue until January, 1867.

Mr. WARWICK. Yes, sir. If the Convention will allow me a moment, I will prepare it.

Mr. COLLINS. I would inquire in regard to Section 6 of this article, providing that the State shall assume the debts and liabilities of the Territory of Nevada.

The PRESIDENT. One moment. I will ask the gentleman to forego his remarks on that subject until we get this proviso corrected, whilst it is fresh in the minds of members.

Mr. WARWICK. I will move the following as a substitute for the proviso:

"*Provided*, That the election for all the county officers of Lander County, except Probate Judges, shall take place at the next general election, to be holden in the month of November, A. D. 1864, at which time their successors shall be elected. But the present incumbents shall hold their offices till the first Monday of December, A. D. 1864, and their successors, elected at the general election in November, A. D. 1864, shall hold their respective offices until the first Monday of January, A. D. 1867."

CALL OF THE HOUSE.

Mr. TAGLIABUE. I believe there is not a quorum present, and I move a call of the House.

The SECRETARY, by direction of the President, counted the Convention and reported seventeen members present, being less than a quorum.

The question was taken on the motion that there be a call of the House, and it was agreed to.

The roll was called, and the following members responded to their names: Messrs. Belden, Brady, Brosnan, Chapin, Collins, Crawford, Crosman, Dunne, Frisbie, Folsom, Kennedy, Lockwood, McClinton, Murdock, Proctor, Tagliabue, Warwick, Wetherill, and Mr. President. Present, 19; absent, 20.

The Sergeant-at-Arms was directed to arrest and bring in absent members.

Messrs. Gibson, Kinkead, and Hawley appeared, stated their excuses, and were allowed to take their seats.

On motion of Mr. TAGLIABUE, a quorum being present, further proceedings under the call were dispensed with.

LANDER COUNTY OFFICERS—AGAIN.

The Convention resumed the consideration of Section 12 of the Schedule.

Mr. WARWICK. I withdraw my amendment, and will merely move to amend Section 13, as engrossed, by adding thereto the following:

"And shall hold their respective offices until the first Monday of January, A. D. 1867."

Mr. CHAPIN. How does the first part of it read?

The SECRETARY. Just as it stands.

Mr. WARWICK. I have endeavored to remedy the defect, and I believe the only way is by this addition.

The PRESIDENT. I will suggest to the gentleman that the original proviso be amended by inserting "shall continue until," instead of "shall expire on."

Mr. WARWICK. I would like to hear it read with that amendment.

Mr. CROSMAN. The terms of the present county officers, I understand, expire in January, and it is proposed by this proviso to cut short their terms. Now, the usual term being for two years, why should we provide for the election of their successors for a term of twenty-five months, when in doing so we are cutting short the terms of the present incumbents? I will move to strike out "December, 1864," and substitute "January, 1865."

The PRESIDENT. If there is no objection that amendment will be made.

Mr. DUNN. Will this proviso, so far as it relates to the Probate Judges, affect the general provision, as to judicial officers elected under the Constitution?

Mr. WARWICK. No, sir. The provision is, that the county officers shall "hold until the election and qualification of the successors of such officers as are not inconsistent with the provisions of this Constitution." The office of Probate Judge, being in conflict with the Constitution, must necessarily expire.

The PRESIDENT. Let the Secretary read the section as it will stand with the proposed amendment, and then each member can judge for himself.

Mr. DeLONG. I move to refer the section to the Lander County delegation, with instructions to report a new proviso, this afternoon, relative to the Lander County officers.

Mr. CHAPIN. Oh, no! I think it is all right, now.

The PRESIDENT. I suggest that the gentleman modify his motion so as to instruct the Lander County delegation to report immediately, in order that we may complete the article.

Mr. DeLONG. He can report it back as soon as he is ready.

The question was taken on the motion to refer Section 13 to the Lander County delegation, and it was agreed to.

TERRITORIAL INDEBTEDNESS.

Mr. COLLINS. It will be perceived, by reference to Section 6 of the Schedule, that the State of Nevada is to assume the debts and liabilities of the Territory of Nevada. I will ask if that assumption is designed to prevent the State from borrowing the full amount of money contemplated in Section 3 of Article IX, which authorizes the State to borrow, not to exceed three hundred thousand dollars, for the purpose of enabling the State to transact its business upon a cash basis. I would like to be informed whether this Section 6 of the Schedule would not conflict with that provision?

The PRESIDENT. If the inquiry is addressed to the Chair, I can only reply that I am not prepared to give an answer.

Mr. COLLINS. In Section 3 of Article IX, it is provided that the State may, for the purpose of transacting its business upon a cash basis, from its organization, contract debts, but which shall not exceed in the aggregate three hundred thousand dollars, exclusive of interest; but Section 6 of the Schedule provides that the State shall assume all the debts of Nevada Territory, which do exceed that amount.

Mr. DeLONG. I think they will fall much short of it.

Mr. COLLINS. I include the soldiers' bounty fund.

Mr. KINKEAD. The bounty fund will not bring it up to anything like it.

Mr. GIBSON. That will not exceed ten thousand dollars.

Mr. COLLINS. With a view of bringing the matter before the Convention, I will introduce a proviso to come in at the end of Section 6, so that the section will read as follows:

Sec. 6. All debts and liabilities of the Territory of Nevada, lawfully incurred, and which remain unpaid at the time of the admission of this State into the Union, shall be assumed by, and become the debt of the State of Nevada; provided, that the assumption of such debts shall not prevent the State from contracting the additional indebtedness as provided in Section 3 of Article IX, of this Constitution.

The question was taken on the adoption of the proviso offered by Mr. Collins, and it was agreed to by unanimous consent.

THE SCHEDULE—CONTINUED.

Sections 18 to 21, inclusive, (being the balance of the article,) were read, as follows:

Sec. 18. Each county, town, city, and incorporated village, shall make provision for the support of its own officers, subject to such regulations as the Legislature may prescribe.

Sec. 19. In case the office of any Justice of the Supreme Court, District Judge, or other State officer shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor, such appointee to hold until the next general election, when it shall be filled by election, for the residue of the unexpired term.

Sec. 20. All cases, both civil and criminal, which may be pending and undetermined in the Probate Courts of the several counties, at the time when the provisions of this Constitution and Probate Courts are to be abolished, shall be transferred to and determined by the District Courts of such counties respectively.

Sec. 21. At the first regular session of the Legislature, to convene under the requirements of this Constitution, provision shall be made by law for the payment of the publication of six hundred copies of the

proceedings of this Convention, in book form, to be deposited as the Legislature may direct; and one Hon. J. Neely Johnson, President of this Convention, shall contract for, and A. J. Marsh, Official Reporter of this Convention, under the direction of the President, shall supervise the publication of such proceedings. Provision shall be made by law, at each first session of the Legislature, for the compensation of the Official Reporter of this Convention, and he shall be paid in coin or its equivalent. He shall receive for his services, in reporting the debates and proceedings fifteen dollars per day during the session of the Convention, and seven cents per folio additional for each printed sheet, and thirty cents per folio of one hundred words for preparing the same for publication; and for supervising and indexing such publication, the sum of fifteen dollars per day during the time actually engaged in such service.

KENNEDY'S CONFIRMATION.

Mr. KENNEDY. Is that the wording of the last section, as reported by the Committee on Schedule—"and he shall be paid in coin or its equivalent?" I would like to have those words stand, however, for I think it is nothing more than right.

The PRESIDENT. That is the language used in the section as reported, and it was adopted in that form by the Committee of the Whole.

Mr. KENNEDY. Very well; I would like to have it stand, if we can do so without a reflection upon the currency of the country. I think the Reporter is entitled to receive that amount of coin, or its equivalent.

Mr. CHAPIN. It is all right as it is.

Mr. KENNEDY. I have no objection, then.

LANDER COUNTY OFFICERS—AGAIN.

Mr. WARWICK. I am prepared now to report from the Lander County delegation, on the proviso to Section 12 of the Schedule. I report back Section 12, with a recommendation that the last proviso be stricken out, and the following inserted in its stead:

"*Provided*, That the election for all the county officers of Lander County whose election is not in conflict with the provisions of this Constitution, shall take place at the next general election, to be holden in the month of November, A. D. 1864, but the term of office of the present incumbents shall not expire until the first Monday in January, A. D. 1865, or as soon thereafter as their successors shall be elected and qualified; and their successors shall hold their offices until the first Monday of January, A. D. 1867."

The PRESIDENT. Does not that provide for two elections?

Mr. WARWICK. Possibly it may bear that construction. A time must be fixed for a new election, or there will be a period intervening without any county officers.

The PRESIDENT. But the difficulty seems to be in the latter part of the proviso—"as soon thereafter as their successors shall be elected and qualified." "Thereafter" would be after January, 1865.

Mr. WARWICK. Yes, sir. Probably it would be enough to say, "as soon thereafter as their successors shall be qualified." I will modify that part of the proviso.

Mr. CHAPIN. I suggest that we strike out Lander County altogether. [Merriment.]

Mr. WARWICK (after consultation with the President.) I believe at last we have it right, I respectfully submit as a substitute for the last proviso as engrossed, the following:

And further provided, That the term of office of the present county officers of Lander County, shall expire on the first Monday of January, A. D. 1865, except the Probate Judge of said county, whose term of office shall expire upon the first Monday of December, A. D. 1864; and there shall be an election for the county officers of Lander County at the general election in November, A. D. 1865, and the officers then elected shall hold office from the first Monday of January, A. D. 1865, until the first Monday of January, A. D. 1867, and until their successors are elected and qualified.

The question was taken on the amendment offered by Mr. Warwick, as finally modified, and it was agreed to.

CONTINUANCE OF ACTIONS, ETC.

Mr. COLLINS. I call the attention of the Convention to the wording of Section 1 of this article. It reads thus:

"All rights, actions, prosecutions, judgments, claims and contracts, as well of individuals as of bodies corporate, including counties, towns and cities, shall continue as if no change had taken place, and all process which may issue under the authority of the Territory of Nevada," etc.

I will move to amend by substituting the word "every" for "all," before the word "process," so as to read "every process which may issue," instead of "all process." It is certainly a little cloudy, as it now reads.

Mr. DUNNE. I do not concur with the gentleman from Storey in regard to the necessity of that amendment. There are certain legal terms, which, to a person unacquainted with legal phraseology, may not seem grammatical, but which are nevertheless perfectly correct in the legal sense in which they are used. I do not consider that there is any inaccuracy in the use of the word "all," in this connection, and as to its legal operation, it is much better than the word "every."

Mr. COLLINS. I would like to have the gentleman explain why "every process" would not cover the entire ground. And, if it would, will not outsiders, who are not stored with legal lore, like the gentleman from Humboldt, regard the use of the word "all," as rather a *faux pas* on the part of the Convention? Certainly "every process" is as handsome looking a phrase. If "all process" is a term in law that has a technical signification which cannot be supplied by other words, I would let it stand; but it seems to me that "every process" would answer quite as well. "All" is plural, while "process" is singular, and the plural adjective would seem to call for a plural noun. As the word "every" would do just as well, I do not see the force of the gentleman's objection.

Mr. DUNNE. "Process" is used as a plural noun—a collective noun—referring to all documents coming under that head. The gentle-

tion from Storey will recollect that in grammar there are collective nouns which have a singular form, and this word belongs to that class.

The PRESIDENT. The gentleman from Storey can move to reconsider the section, in order to make the amendment, objection being made. I think, however, that the gentleman from Humboldt is right in his view of the matter.

Mr. COLLINS. I move to refer the section to a committee of one, to consist of the gentleman from Ormsby, Mr. Kinkead, with instructions to make the amendment.

The question was taken, and the motion was not agreed to.

SALARIES AND APPROPRIATIONS.

Mr. DUNNE. Before this article is finally disposed of, I suggest that there is a section which the Convention has heretofore ordered incorporated in it, and which has not yet been read. I refer to the article on Salaries, which was directed to be inserted as a simple section in the Schedule.

Mr. BRENNAN. There was also another section ordered transferred to the Schedule—Section 6 of the article on Miscellaneous Provisions.

The SECRETARY. That has been incorporated; it is Section 7, as read.

The PRESIDENT. The article on Salaries is in the hands of the Committee on Phraseology, and the Convention having ordered that it be inserted by that committee as a section in this article, the committee will undoubtedly do so before the final enrollment of the article.

Mr. DUNNE. I understand that there is a strong desire to have that article on Salaries again under consideration, for the purpose of adding some of the amendments which were stricken out, or substituting something else in their place, in regard to limiting the appropriations, or limiting the amount of the tax that may be levied. I hope an opportunity will be afforded, if there is any chance for it.

The PRESIDENT. I conceive that the article on Salaries is beyond the reach of the Convention. It was passed some time since, and a motion was subsequently made and carried, that it be incorporated as a section in the Schedule.

Mr. DUNNE. We are now at work on the engrossed copy, I understand?

The PRESIDENT. Yes, sir; on the third reading of the article.

Mr. DUNNE. Then, I suppose, there will be a chance afterwards to get in amendments?

The PRESIDENT. No, sir; except by unanimous consent, or reconsideration.

Mr. KENNEDY. As it is near 12 o'clock, I move that we take a recess, so that the amendments suggested can be prepared in the mean time.

The question was taken, and the motion was agreed to.

Accordingly, at five minutes before 12 o'clock the Convention took a recess till 1 o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled, and was called to order by the President at twenty minutes past 1 o'clock, P. M.

The SECRETARY counted the Convention, and reported that there was not a quorum present.

Mr. GIBSON. I move a call of the House.

The PRESIDENT. Possibly, if the gentleman will withdraw his motion for a few moments we may obtain a quorum without the necessity of calling the roll.

The SECRETARY again counted the Convention, and reported just a quorum in attendance.

JUDICIAL DEPARTMENT.

Mr. KINKEAD, from the Committee on Phraseology and Arrangement, submitted the following report:

Mr. President—Your Committee on Phraseology, etc., report that they have carefully examined Article VI, entitled "Judicial Department," and recommend the adoption of the following amendments before being finally enrolled:

In Section 3, strike out the word "and," after the words "four, and six years respectively."

In Section 7, in the last proviso, strike out the word "provide," and insert the word "designate," in lieu thereof.

In Section 10, strike out the words "to be fixed by law," and insert the word "which" before the word "shall."

In Section 11, strike out the words "upwards of," and insert the words "more than," in lieu thereof.

Also, strike out Section 12, as passed, and substitute therefor the following:

Sec. 12. No Judicial officer shall be superseded, nor shall the organization of the several courts of the Territory of Nevada be changed, until the election and qualification of the several officers provided for in this article.

All of which is respectfully submitted.

J. H. KINKEAD, Chairman.

The PRESIDENT. The Secretary will read the several amendments, and the sections or clauses as proposed to be amended.

The SECRETARY. The first amendment is in Section 3, to strike out the word "and," between the words "respectively" and "from," so that the clause relating to the terms of Justices of the Supreme Court will read:

"Who shall hold office from and including the first Monday of December, A. D. 1864, and continue in office thereafter, two, four, and six years respectively, from the first Monday of January next succeeding their election."

The question was taken, and the amendment was agreed to.

The SECRETARY. The next is in Section 7, to strike out the word "provide," where it last occurs in the section, and insert in lieu thereof the word "designate," so that the last clause in the section will read:

"Provided, that in case any county shall be hereafter divided into two or more districts, the Legislature may by law designate the place of holding such courts in such districts."

The question was taken, and the amendment was agreed to.

The SECRETARY. The next amendment is in Section 16, to strike out the words "to be fixed by law," and insert the word "which," so as to read:

"The Legislature, at its first session, and from time to time thereafter, shall provide by law that upon the institution of each civil action, or other judicial proceeding, in which the amount in controversy, or the value of the property in dispute, exclusive of costs, shall exceed in value, a special court fee or tax, which shall be allowed to the clerks of said courts, respectively, by the party or parties bringing such action, or taking such appeal," etc.

The question was taken, and the amendment was agreed to.

The SECRETARY. The Committee next recommend that Section 17 be amended by striking out the words "upwards of" before the words "ninety consecutive days," and inserting in lieu thereof the words "more than," so that the section will read as follows:

Sec. 17. The Legislature shall have no power to grant leave of absence to any judicial officer, and any such officer who shall absent himself from the State for more than ninety consecutive days, shall be deemed to have vacated his office.

The question was taken, and the amendment was agreed to.

The SECRETARY. The last amendment is to strike out Section 18, as engrossed, and substitute a new section therefor. The section proposed to be stricken out reads as follows:

Sec. 18. In order that no inconvenience may result to the public service from the taking effect of this Article, no judicial officer shall be superseded, nor shall the appointment of the several courts be changed thereby, until the election and qualification of the several officers provided for in the same.

The new section proposed to be substituted therefor, reads as follows:

Sec. 18. No judicial officer shall be superseded, nor shall the appointment of the several courts of the Territory of Nevada be changed, until the election and qualification of the several officers provided for in this Article.

The question was taken, and the amendment was agreed to.

The PRESIDENT. The Article will now be referred to the Committee on Enrollment.

THE SCHEDULE.

The Convention resumed consideration of Article XVII, entitled Schedule, the question being on the final passage of the Article.

TAXATION AND APPROPRIATIONS.

Mr. CHAPIN. I have an amendment which I wish to offer, as an additional section of the Schedule, to come in at the proper place.

The SECRETARY read Mr. Chapin's proposed amendment, as follows:

SEC. —. For the first three years after the adoption of this Constitution the Legislature shall not levy a tax, for State purposes, exceeding one per cent. per annum on the assessed property in the State, nor shall any appropriation be made out of the moneys arising from said tax, except in the following order, to wit:

First—For payment thereof upon the public debt.

Second—For salaries of State officers.

Third—For State Prison expenses.

Fourth—For Educational purposes.

Fifth—For Legislative and Miscellaneous expenses.

Mr. DeLONG. If the arrangement is to be made in the order of merit, the Legislature might possibly go before the State Prison; however, I do not know but it is all right. [Merriment.]

[Mr. Kearney in the Chair.]

Mr. CHAPIN. I move that the article be recommitted to a select committee of three, with instructions to amend by inserting that section, and to report the article immediately back to the Convention.

I will briefly state my reasons for making the motion. They are mainly two-fold. In the first place, we are all of us aware of the very heavy expenditures which always attend the first organization of a State Government, and we desire, if possible, to save ourselves and our constituents the hundreds of thousands of dollars, that will be squandered, within the first three years, if we leave the subjects of taxation and appropriations open to the discretion of the Legislature. We shall need that money for other purposes, and we shall have abundant occasion to use it, and more than that, for such purposes, after the expiration of the three years which are mentioned in the section I have proposed.

Another reason for offering the amendment is this, that unless we can fortify the Constitution in such a manner that the people will be able to count up the cost of a State Government, it is not going to be adopted. For one, I set that down as a positively inevitable result. If we shall fail to protect the people from the unrestricted levying of taxes by the Legislature. Now, sir, for my own part, I desire very much to have Nevada come forth from this uncertain, infantile state that she is now in, from this kind of a tad-pole condition, if you please.

Mr. DeLONG. A pollywog condition. [Merriment.]

Mr. CHAPIN. We have been in the condition of an underling long enough, and now I want to take a position which will command respect and honor. Let us take our place among men, and not like men—like good and true Union citizens of the United States, faithful to the glorious Union by which our country has been, and must continue to be preserved. I desire, therefore, to see this Constitution carried before the people, if it is a possible thing, and to accomplish that purpose is one of the main objects I have in view in offering this additional section. I trust that it may be adopted and incorporated in this article, for the two-fold purpose I have stated, and for many other reasons which might be enumerated. I will occupy no further time, however, at present. These two Articles are enough for my purpose, and I hope they will be sufficient to induce the Con-

vention to adopt the section. I have some figures prepared in relation to the subject, which I will present in due time, if there is occasion, but will not offer them now.

Mr. JOHNSON. The gentleman had better present his figures now, as he has only five minutes time allotted him, and I intend to insist on a strict enforcement of the rule.

Mr. DeLONG. I would like very much to support this amendment, if the gentleman can show me that the amount of taxation therein specified will be sufficient to support the State Government.

Mr. JOHNSON. And the propriety also of the designated order in which the money raised is to be expended. That, it occurs to me, is a more serious objection.

Mr. DeLONG. I do not know that I am much opposed to the order of payment prescribed. The interest on the public debt is the first item, I notice, and it should be. Then the salaries of the State officers, and I am in favor of giving the judges a chance for their compensation, at least. Then the next thing he puts the State Prison convicts ahead of the Legislature, and I approve of that. No, sir, I have no fault to find with the grading adopted. [Merriment.]

Mr. JOHNSON. Could not the Legislature be classified with the convicts? [Laughter.]

Mr. DeLONG. Well, perhaps the convicts would not feel offended.

The PRESIDENT pro tem. Perhaps some members may feel personally interested.

Mr. DeLONG. If the present occupant of the Chair has an interest, I will withdraw the objectionable part.

But in all seriousness, Mr. President, I would like to be able to go on the stump and show that there can be no possibility of any exorbitant tax being levied by the Legislature, under any circumstances, for there is scarcely anything that would have so great an influence in favor of the Constitution; but, until I see the figures, I think we should be acting hastily to tie the hands of the Legislature, so as to prevent their raising any more money, no matter how pressing the exigency might be, or how great the expense of sustaining the State Government. I do not believe in transacting business under false pretenses. Therefore, unless my colleague, or some one else, shall show me that this tax will be sufficient to pay the expenses of the State, I cannot vote for the amendment, whilst on the other hand, if that fact can be made apparent, I shall cheerfully give it my support.

Mr. DUNNE. I think I can satisfy the gentleman that a tax of one per cent. on all the taxable property of the State of Nevada, if it is to be a State, taken in conjunction with the other provisions of the Constitution, will furnish ample means for carrying on the government of the State from year to year.

Mr. DeLONG. I hope so.

Mr. DUNNE. It will be observed that a tax of one per cent. on twenty-five millions, which is the estimated valuation of the Territory at present, will yield a revenue of two hundred and fifty thousand dollars; and deducting the usual amount of one-fourth for delinquencies and the cost of collection, you have left a net revenue of one hundred and eighty-seven thousand five hundred dollars. Now, in the second year, under the State organization, I think there can be no doubt that there will be not less than forty millions of taxable property, which will leave, after deducting the twenty-five per cent. for delinquencies and cost of collection, a net revenue from that source of three hundred thousand dollars. Then, even granting that there should be no further increase for the third year, and consequently no more revenue derived from that source, still you have an income of three hundred thousand dollars for the third year, and I will ask if any gentleman imagines that the expenses of our State government can possibly exceed the sum of three hundred thousand dollars a year?

Mr. DeLONG. I do.

Mr. DUNNE. Very well; then even supposing that the State government uses up all that money, still it has a margin of three hundred thousand dollars, the amount to which it is at liberty to go into debt. That sum may be borrowed, and dividing it equally between the three years, it will give one hundred thousand dollars a year, in addition to the amount to be raised by this tax. Now if the tax of one per cent. upon the taxable property of this State, with a margin of one hundred thousand dollars a year in addition, to go on, is not likely to be enough to support the State government, then indeed we should not adopt a State government. But with that estimate of the amount of the taxable property of the State, and with that margin of three hundred thousand dollars to go upon, to be divided between the three years, I think a tax of one per cent. will raise more revenue than it will be necessary to expend. And it will be remembered that we have to-day adopted an amendment which provides that the debt of the Territory is not to be included in the three hundred thousand dollars—the maximum amount of indebtedness which the State is authorized to incur—but that the State is allowed to contract an indebtedness of three hundred thousand dollars outside of and beyond the Territorial debt. I repeat that if there is any danger that the expenses of the State are going to amount to more than the revenue to be derived from a tax of one per cent., and one hundred thousand dollars a year in addition, then we cannot stand a State government.

Mr. CHAPIN. I will now, by leave of the Convention, submit my figures; but first I will take the liberty of alluding briefly to the figures of my friend from Humboldt (Mr. Dunne.) I estimate the taxable property of the State at more than he does. I believe the proceeds of the mines alone will amount to twenty millions, but we will call that item fifteen

millions, if you please, and then we have a total basis of taxation of forty millions of dollars.

Mr. JOHNSON. How does the gentleman suppose the tax on the proceeds of the mines will be raised? Will it be levied on the net or on the gross proceeds?

Mr. CHAPIN. On the gross proceeds, sir.

Mr. JOHNSON. But the gentleman was unwilling to vote for the taxation of the gross proceeds.

Mr. CHAPIN. I believe, nevertheless, that it will be the gross proceeds of the mines that will be taxed.

Mr. JOHNSON. Did not the gentleman vote against inserting the word "gross" in the article on Taxation?

Mr. CHAPIN. I was willing to leave it to the Legislature. But, sir, it is my idea that the tax should be levied on the gross proceeds, and will be.

Mr. WARWICK. Why should the gentleman from Storey base his estimate upon only forty millions, when it is well known that we have more than that amount in the gross proceeds of the mines alone?

Mr. CHAPIN. I make allowance for leakages. I hope these interruptions by various gentlemen will not be taken out of my time. I say we have a total valuation, including the proceeds of the mines, of forty millions of dollars, and a tax of one per cent. upon that will yield four hundred thousand dollars. Then if you deduct one-fourth for delinquencies and the expense of collection, you still have a net revenue of three hundred thousand dollars a year, from the very commencement of our existence as a State. Now what are going to be the expenses of our State government? Here are my figures:

SALARIES.

Governor	$ 4,000
Secretary of State	3,000
Controller	3,000
Treasurer	3,000
Attorney General	3,000
Superintendent of Public Instruction	2,000
Surveyor General	1,800
Military Department	1,000
Three Judges of Supreme Court (each judge $7,000)	21,000
Clerk of Supreme Court (paid by fees)	
Total amount of salaries	$42,800

GENERAL EXPENSES.

Support of Insane	$ 3,000
State Prison	20,000
Common Schools	15,000
Printing	5,000
Official Advertising	1,200
Traveling expenses Superintend't Public Instruction	200
Agricultural Society	2,000
Interest on present Public Debt	34,500
Interest on Funds to be borrowed	21,500
Incidental expenses for Stationery, etc., for the several departments	2,000
Executive records, etc.	2,000
Total general expenses	$108,400

LEGISLATIVE EXPENSES.

Legislative per diem, 25 members, 60 days, at $8 per day	$ 12,000
Mileage of Members	2,000
Pay of Clerks	2,000
Pay of Sergeant-at-Arms, porters, pages, etc.	1,200
Fuel and Lights	800
Total Legislative expenses	$18,000

Aggregate expenses of State government for one year $168,200

These are the figures, and all I have to say is that the aggregate amount is $42,600 more than the gentleman from Ormsby (Mr. Johnson) could possibly figure up in the Convention of last year, for the estimate made at that time was $150,000.

Mr. JOHNSON. My recollection is entirely different in regard to that. According to my remembrance, the estimate then made was over two hundred thousand dollars, and we allowed a margin of twenty-five per cent. upon that sum.

Mr. CHAPIN. Well, I think this estimate may possibly be a little too low in some of the items. We shall not differ a great deal, however, and even if we set the aggregate amount as high as two hundred thousand dollars, if you please, still we have a margin left of a hundred thousand dollars, for incidentals and miscellaneous expenses—the various matters which cannot be brought into an estimate of this kind. I ask if that is not margin enough for us to allow, when we are embarking on this new and untried ocean of the experiment of a State government? I think it is, and I hope we shall decide so to limit the expenses of the new State government, that the people can sit down and calculate for themselves how much and how little of a burden they are called upon to bear.

Mr. JOHNSON. No person would rejoice more than I, if it shall be found that one per cent., or any other limited amount of taxation within the bounds of reason, will prove sufficient to carry on our State Government as it should be conducted. And the less the rate of taxation the better satisfied would I be, as I have a little property on which I am now called upon, from time to time, and expect to be hereafter, to pay my proportion of taxes. But, sir, these matters of figures and calculations, I think, are generally designed to mislead men, in the consideration of subjects of this character. And there is one item of importance which the gentleman from Storey certainly did not take into account in preparing his figures. He speaks of the interest on the public debt, but not of the principal. This item of interest on the present public debt, of $34,500 a year, presupposes a principal sum, and we cannot well manage without paying that principal at some future time.

Mr. CHAPIN. We can try to manage for the first three years, till we become a little more prosperous.

Mr. JOHNSON. Then we will have to repudiate the public debt already voted by the people of Nevada. Now there is an outstanding indebtedness, independent of the old bonded debt of the Territory, which amounts to an average, taking the several items, principal and interest together, of about $32,333 33 a year, for the next four and half years, which must be paid by the people of this State, whilst the bonded indebtedness created under the Act of the last session of the Legislature will reach the amount of $150,000, with interest at one and one half per cent. per month, payable semi-annually, and the principal to be paid at the end of the year. Upon the old issues of Territorial bonds running for periods ranging from one to five years, the State will have to discharge the principal and interest as they fall due, and the amount of principal coming due increases each year for the next five years, ranging from $47,000 to about $90,000 a year. The total amount of principal and interest on these bonds is $242,000, which must be paid in five years from the first day of February last. All these payments must be provided for out of the revenues of the next four years, the aggregate amount of such payments being $240,000, principal and interest, and I repeat that my friend from Storey has erred in not making calculation for the payment of this indebtedness from year to year.

Mr. CHAPIN. Allow me to state that I made up those figures.

Mr. JOHNSON. The gentleman will excuse me; I am not through yet. There is another item which I had overlooked, of $80,000 for the State Prison bonds. Those bonds bear interest at ten per cent. per annum; and consequently the interest on them amounts to $8,000 a year.

The PRESIDENT *pro tem.* A portion of those bonds, amounting to $30,000, has been paid.

Mr. JOHNSON. Well, then the principal is $50,000, and the interest $4,000 a year. Then of the old bonded indebtedness there are $15,000 bearing interest also at ten per cent. The average amount to be paid each year for the next four years and a half from the present time, is, as I have stated, $32,333 33, independent of the old bonded indebtedness of $15,000, which to that extent will increase the amount.

The PRESIDENT *pro tem.* Of that indebtedness $5,000 becomes due in February next, and $10,000 one year thereafter.

Mr. JOHNSON. Then that increases the average, so that it must be not less than $35,000 a year that the State will have to pay during the next four years and a half, on account of the present indebtedness of the Territory. I have not seen which the gentleman from Storey had overlooked or forgotten when he made his calculation. He allows only for the payment of the interest on the public debt, but here is the principal, various payments of which not only is the faith of the Territory of Nevada pledged, but also the faith of the proposed State of Nevada, so far as it can be done by the members of this Convention, who have already voted that the State shall assume the indebtedness of the Territory. If, therefore, we do not provide for the payment of that indebtedness, the principal as well as the interest, I say it goes forth to the world as a violation of the pledged honor, not only of the Territory but of the State, in which every member of this Convention is directly involved.

Mr. CHAPIN. Does not the gentleman from Ormsby consider that the provision which is made in the Constitution for the issuing of the bonds of the State, to the amount of three hundred thousand dollars, will be amply sufficient to meet all these demands? I confess that I did not take into account the payment of the principal of the Territorial debt, because while we assume all the debts of the Territory we at the same time adopt a provision authorizing the State to issue its bonds to the amount of three hundred thousand dollars, and that I think should be ample to meet the Territorial indebtedness, and a good many other demands.

Mr. JOHNSON. I admit it, but the gentleman has claimed the benefit of that one hundred thousand dollars a year, as a margin for miscellaneous and contingent expenses of the State Government. I deny that he has a right to call it an appropriation for the payment of the principal of the Territorial indebtedness, or any part of it, if he also claims it as a part of the fund for carrying on the State Government. It will not meet that and the bonded indebtedness of the Territory also; hence if the one proposition is correct the other cannot be. Consequently, if he admits that the State assumes the payment of these Territorial obligations to the amount of $35,000 or $45,000 a year for the next four years and a half, then he must make that addition to his estimates, and therefore it is shown that his estimates fall short something like a hundred thousand dollars a year. If the gentleman includes the three hundred thousand dollars which the State is authorized to borrow for the payment of the principal and interest of the bonded indebtedness of the Territory, it must be considered for that purpose in these estimates, so that the amount of this Territorial debt must be added to the summary of figures which he has presented.

But, sir, if time, and the patience of the Convention allowed, I might proceed further in reviewing the gentleman's figures in regard to the various items of expenditure. For instance, he has allowed but $1,500 a year for the payment of clerks of the Legislature, one session of which, during the three years, will be for ninety days, and then two sessions of sixty days each. Why, sir, any man who ever had a seat on the floor of a legislative body, or who is at all cognizant of the amount of the labors devolving upon the clerical force of such a body, will at once be satisfied that such a sum is altogether insufficient. It would amount to not more than

enough to pay the salary of the chief secretary or clerk of each branch, and one clerk in addition.

A Member. Time!

Mr. JOHNSON. Time is called upon me, and I do not propose to exceed the limit established by rule of the Convention.

Mr. COLLINS. I think the gentleman has spoken twice.

Mr. JOHNSON. Only once upon the proposition in its present shape. However, I hope no other gentleman will be allowed to exceed his allowed time.

Mr. KENNEDY. I move to amend the section proposed by the gentleman from Storey (Mr. Chapin), by adding the following:

"Provided, The Legislature may levy a special tax not exceeding one-fourth of one per cent. per annum, which shall be appropriated to the payment of the indebtedness of the Territory of Nevada, assumed by the State of Nevada, and for that purpose only, until all of said indebtedness is paid."

Mr. CHAPIN. I will accept the amendment.

Mr. JOHNSON. I suppose I may have the privilege of speaking to this amendment.

Mr. BANKS. This is a matter involving a good many figures and facts, with which I confess I am not familiar, and I think that is the position of a great many other members. I will therefore ask as a special favor that gentlemen who are familiar with the subject, as the gentleman from Ormsby (Mr. Johnson) appears to be, shall not be prevented by the enforcement of the rule, from speaking longer than five minutes.

Mr. JOHNSON. There is only this objection, that we are now, we hope, near the close of the session, and if such privilege be extended to one member, it must be to others, because it is would be unfair to discriminate; and if every member is allowed to speak as long as he chooses we shall never get through.

Mr. McCLINTON. I am very much opposed to extending the time to any member, unless we give all the same chance. Though I should like exceedingly to hear the gentleman from Ormsby, and other gentlemen who have spoken, explain their views more fully, yet there are others who may understand the subject nearly as well, and who perhaps would also like to be heard.

Mr. MURDOCK. The gentleman from Ormsby can have five minutes of my time.

Mr. JOHNSON. I am entitled to five minutes, I believe, on the amendment offered by the gentleman from Lyon (Mr. Kennedy). I do not wish to consume the time of the Convention unnecessarily, but I do conceive that this is an exceedingly important matter, and I fear that gentlemen have not given it proper attention, especially those who seem to favor the proposition of the gentleman from Storey (Mr. Chapin). I know the motives of that gentleman are all proper, of course. He is very desirous of having a State Government; he feels the importance and necessity of it; and he has offered this proposition believing it will have a tendency to strengthen the Constitution before the people, but I fear without reflecting with sufficient care and consciousness upon all its important bearings.

Now, sir, as was said by another gentleman from Storey, (Mr. DeLong,) I do not desire to have a Constitution thrust upon the people of the State of Nevada under false pretenses. I do not feel like going before the people of the State and saying, because forsooth the Constitution declares they cannot be taxed more than one per cent., therefore they will not be, and cannot be, under any circumstances. But there is another and more important matter to be considered, namely, the honor of the State, its plighted faith and credit. A State ought never to be placed in a position where it will even be possible that the consequences of pecuniary repudiation of the indebtedness of that State may follow. For this reason, if for nought else, I am opposed to adopting the proposed restriction.

Gentlemen who have spoken upon this and kindred subjects heretofore, have declared their willingness to confide in their respective delegations in the Legislature. Now are they not willing, when, by the numerous restrictions and limitations which we have heretofore adopted, those who may be delegated to represent us in the Legislature are bound, as it were, hand and foot, in respect to the expenditure of money—although not more so than is needful, in my judgment—are they not willing to trust them, under such stringent provisions as we have adopted, to vote the appropriations—to raise by taxation, and to expend whatever amounts may be necessary to administer the affairs of the State in an economical manner? I have no greater interest than others, and none less, in securing an economical administration of the State government, and as evidencing my views upon that question, it is quite enough to advert to the votes which have been cast in the Convention upon the various questions affecting the matter. It is true that sometimes I have exceeded other gentlemen in my ideas of liberality respecting what should be regarded as the proper compensation of certain public servants, but it was only because I believed it would be for the benefit of the State to bestow upon those officers an amount of compensation sufficiently liberal to secure the services of competent men, rather than to establish salaries at so low a figure that none but incompetent persons would accept such positions. In other words, my judgment as to the extent of the compensation which should be allowed for certain public services has been variant from that of other members; but on the whole, I think that the record of my votes will compare favorably with that of any other member, on the general proposition that our State government shall be administered upon the most economical basis that may be found practicable.

But whilst I favor the general policy of economy, I do conceive that the adoption of this proposed new section would be hampering and clogging the Legislature to such a degree that many certain contingencies that may arise, the most unfortunate consequences, in a financial sense, would, in my judgment, ensue. Possibly I may misjudge in entertaining such apprehensions; but even admitting that it is possible to conduct the State government successfully with the restrictions now proposed, still we ought not to present the spectacle of reposing a State government upon the people, and voting ourselves into the position of a State among the other States of the Union, with restrictions contained in our fundamental law of such nature that they may be likely to result hereafter in practical repudiation.

We cannot foretell what will be the expenses of our State government. We may make approximate estimates, perhaps, but we know not how far they will fall short of the actual expenditures. And I take issue with the gentleman from Storey (Mr. Chapin) in regard to many of the facts and figures which he has presented. I have already taken occasion to refer to the single item of the pay of clerks of the Legislature, for which he has only allowed two thousand five hundred dollars a year. Why, sir, any member of this body who has had legislative experience, or knowledge of the duties necessary to be performed by those officers, for the proper transaction of the business of a legislative body, will know that such an estimate must fall very far short. The per diem and mileage of members of the Legislature we can readily estimate. We can approximate very nearly in estimating the mileage, per diem, and other expenses of the Legislature, aside from that of the clerical force. The gentleman gives us also an estimate of the State Prison expenses, which he places at twenty thousand dollars a year, but I hesitate not in saying that no man can even approximately conjecture those expenses. And there are various other items, concerning which no definite estimates can be made.

And why, I ask, is it proposed that we shall have definite that the Legislature shall not impose a tax exceeding one per cent. per annum, when the judgment of the members of the Convention is so various as to the maximum tax, and the amount of our taxable basis? Why, sir, I have heard my friend from Lander (Mr. Warwick) say that we shall probably ship from the State twenty-five or thirty millions of bullion within the year. It is true that I have not heard any endorsement of that opinion, within the body of this Convention, but I have no doubt there are others who agree with the gentleman. Upon that point, however, we have some data which is to a certain extent reliable as a basis for an estimate, and I have not heard any gentleman, in position to have access to such needful data, place our past shipments of bullion beyond fifteen millions. I have heard expressed the opinions of several intelligent and well informed gentlemen, and none of them has placed it at a higher figure.

Mr. WARWICK. Will the gentleman from Ormsby allow me to ask him a question? I simply wish to inquire what has been the production of the Gould and Curry mine for the year last past?

Mr. JOHNSON. Not having any business or other relations with the Gould and Curry Mining Company, I am not able to answer the gentleman. Nevertheless I am able to state this, that Wells, Fargo & Co., through whose express offices the shipments are made, assay the amount of bullion shipped during the past year at considerably less than fifteen millions, and my impression is that they place it at but little more than twelve millions of dollars for the year ending on the 1st of July, instant. And if we are to judge from newspaper reports as to the determination of the directors of the Gould and Curry Company in regard to the management of the affairs of their mine in the future, their shipments will fall far short of what they have been in the past.

We find by a published report, which seems to have met with the acquiescence and concurrence of the directors, whilst there are at present somewhat more than twenty mills engaged in reducing their ores, that their future policy will be to reduce their ores in their own mills, and by their own peculiar processes; and it is a well known fact that within the past thirty days more than thirty mills in the Territory have been turned off from working ores from that mine. And, sir, in connection with this change of policy, it is hardly necessary to mention the well known and very important fact that the Gould and Curry mine has heretofore been producing more than one third of the total amount of the gross proceeds of the mines of this Territory.

But, I am opposed to this restriction of taxation upon other grounds. I confess that I see nothing so discouraging in the present condition of things as to lead me to believe that our future production will fall short of what it has been in the past, while I think there is much reason to hope that it will far exceed that of past years. But whilst conceding this, I insist that it behooves us, as men engaged in the important work of forming a government for the people of Nevada, in making our estimates, to revert to the past condition of our Territory, and judge of the future by the past. And, sir, in my opinion, there is no gentleman in this Convention who for a single moment believes that outside of the mines of this Territory, if the assessment were to be made to-day, the amount of taxable property returnable within the Territory, would approach anywhere near the figures presented by the assessors in the returns which they made last year. I regret to be obliged to confess to this despondingly view of our condition, but it is

ny honest and sincere conviction, and facts which are in the possession of all the members of this Convention, must have convinced them. I have no doubt of the correctness of my statements.

Therefore, whilst gentlemen are seeking for sources of revenue, by taxation, when they have laid down upon them the amount of taxable property other than in the mines, they must look the facts boldly in the face, and in making their estimates and calculations of assessments and taxation in the future, they must be governed by the experience of the past and the existing condition of things. I hope gentlemen will have recourse to some authentic data upon which to base their estimates of the amount of taxable property in the State, and when they tell us that that amount has reached twenty-five millions exclusive of taxable property in the mines, they must at the same time admit the other fact, that the amount of delinquent taxes has hitherto exceeded by far the proportion of twenty-five per cent. That estimate of twenty-five per cent., for delinquent taxes and cost of collection, was made by me originally, based upon the ultimate determination of disputed questions regarding the revenue, by legal decisions, and consequently a more fixed and stable condition of things in the future; but until that time, we must approximate our estimates more to what we find has been the experience of other new States. For example, look to the history of the State of California, in the earlier years of its existence, and it will be found that for the first five years the delinquent list amounted to considerably more than twenty-five per cent., and even at the present time the delinquencies and the expenses of collection very nearly, if not quite, equal that proportion. And in this Territory, I have not the exact figure, but I believe the facts warrant me in assuming, that for the past year the delinquencies and the expenses of collection have quite reached fifty per cent. And we cannot expect to improve much upon that for the first year or two after our State organization, although ultimately, when affairs become more settled, there will doubtless be a material improvement in favor of the revenue. In the mean time, however, these delinquencies diminish considerably the anticipated revenue, and necessarily increase in corresponding proportion the amount of the tax necessary to be levied for the support of our State Government.

I am not willingly taking issue on this proposition. It may be that we can carry on our State Government successfully with a less rate of taxation than one per cent., but even if it be a matter of possibility, I deny that we can rightfully assume it as a certainty, and I say we have not the data upon which to base the estimates by which we can with propriety prohibit or limit the Legislature in that regard, as proposed by the gentleman from Storey. I do not conceive that such a restriction would be practicable, and I fear that the proposition is merely an attempt to grasp at something to be offered as an additional argument in favor of the State Government, but, forsooth, the people may repudiate our action.

I am not here, sir, to favor a proposition that carries with it even the possibility of entailing upon myself, and you, and the gentleman from Storey, and other members of the Convention, the necessity of endeavoring to induce the people by what may be regarded as false or fraudulent representations, to vote for the adoption of this Constitution. If our constituents shall choose to adopt the Constitution, if the merits of this instrument shall be such as to commend it to the popular judgment, if the great benefits which are to ensue by reason of the formation of a State Government shall be so apparent that the people are prepared to adopt it, then well and good. But let them comprehend fully the extent of the burden they are to assume, and the sources from which taxation is to be derived; and then, if they shall decide to adopt the State form of government, let them send their best men to the Legislature, and, hampered and bound as they are by the restrictions which we have heretofore adopted, I conceive that it will be impossible for such representatives to impose any burdens upon us beyond what the wants and necessities of the government absolutely require.

Mr. WARWICK. I thought when leave was given the gentleman from Ormsby to speak beyond the allotted time, that he was going to present facts and figures for the enlightenment of the Convention; but instead of that he has only made a labored argument to show the difficulty of carrying on the State government. That is a thing which has been argued sufficiently, and as I see nothing in the gentleman's speech but the foundation of a long, exalted debate, resulting in no good, believing that every man's mind is made up, and his position taken, and that no words can possibly be spoken in debate that would change one single vote, I shall desire hereafter to have the rule strictly enforced.

Mr. DuLONG. I may be a little over sanguine, but I feel as confident as I do that I live, of the fact that this year will see the taxable property of Nevada, even including the net proceeds only, and without counting the gross proceeds of our mines, reach the aggregate value of at least thirty millions of dollars. I am led to that conclusion by the fact that new mills are continually going up in the Territory, and also by the further fact that every old mill, and every new one, as soon as it is completed, is at once put into operation, with all the work it can do. That is the proper stand-point from which to judge. We must not single out one mine like that of the Gould and Curry, and say because that mine produces less ore than formerly, therefore the whole amount of the proceeds of the mines is going to be less. But even in the case of the Gould and Curry, the decrease is only attributable to

a change of policy on the part of the Government. They have already come to the conclusion that it is better to settle with their own responsibility, and crush more of it themselves; or, in other words, to give less of land grants away to the railroad companies than they have done. I believe that their views will apply to all the others. On the contrary, where we find some company offering a fair price for the section, like this Pacific, giving one to the mile here or five dollars an acre as it did some years ago; and the same thing is true of many other Companies, and their names down that whole range towards Gold Hill. And even on the other hill-grazing, of the mines are ready for working, and hundreds of men are now toiling and sweating up the rich deposits, where six months ago nothing was being done but running backwards and forwards in order to discover the ledges. These and improvements of an important and permanent character, which will add largely to the taxable property of the State, and consequently to our ability to support a State government.

I support the amendment which was suggested on the suggestion of the gentleman from Lyon (Mr. Kennedy), because I believe that additional one-fourth of one per cent. will be enough to pay the Territorial debt, leaving the law of one per cent. to pay the current expenses of the State Government. I infer that it will be amply sufficient. In my own opinion we shall have, to start with, forty millions worth of property on a taxable basis. A tax of one per cent. on that will yield four hundred thousand dollars, and deducting one-quarter for delinquencies, etc., leaves an actual revenue of three hundred thousand dollars, and if we can collect the State Government on three hundred thousand dollars a year, raised by taxation, not counting in the Territorial indebtedness, then I, for one, am not in favor of adopting a State Constitution.

The only reason why I am in favor of the proposition to limit and restrict the amount of taxation in this, that then nobody can go out and bonding the people. We can then say to the people with full confidence and good reason, that by no possibility can a debt of a greater amount than three hundred thousand dollars be contracted, and neither can there be, by any possibility, a tax imposed exceeding one and one-quarter per cent.; and the people will see and know that we are speaking the truth, because our fundamental law plainly limits the Legislature, and will not permit it to impose a greater indebtedness, or to tax the people beyond that amount. And, sir, just as sure as we are living men, if we do not incorporate some thing of the kind into this instrument, our children must rest on the stump who, in their earnest opposition to the Constitution, will impress upon the people, by a vast array of figures which they do not themselves understand—which men of ordinary intelligence cannot comprehend, but which will serve nevertheless as delusive clamor—that the taxes under the State Government are going to be perhaps as high as they are from year to year.

I am in favor, too, of the proposition to put the Legislature last on the list. It will make the members more economical, because they will want to make a record for economy, because they will want to stump the State for re-election, and they will not be anything of the kind, but they will be in their places. Taking the last one first, they will take care that supporting clerks be left, if possible, to some extent, for they will understand that we have got enough Lord Cecil Lowes to spend Gomes as they had in the State of California, when everything else was used up.

Mr. RALSTON. The gentleman knows something about that, I think. (Laughter.)

Mr. DELONG. Oh, the gentleman from Humboldt was also there, and I believe they had to place a special guard around the State Treasury to keep him out of the money. (Laughter.)

The PRESIDENT. pro tem. Gentlemen must not indulge in personal or personality allusions.

Mr. DELONG. Well, I am in favor of the proposition as a whole. I know that many members come now elected to the Legislature, and numerous measures introduced and instituted. Where some good fellow comes before the Legislature with a bill for relief, or a claim for building a new State Prison, or a Capitol building, or the improvement of the Insane Asylum by the addition of a wing; they say it does not affect them, nor anybody in particular, and as long as it does not affect their own pay there goes another mule will vote for such bills, and so they will override, and override, and vote down the men who work and vote, and act for the good of the State, and who have to share with them the odium of squandering the public money. But you bring it down to their own interest, and you will change all that. You hit the pocket nerve, and you will find it the most sensitive and sensitive in the human system, and the mule will jump higher, and yell louder, than he will if you hit him in the eye. (Merriment.) You adopt such a provision that the members of the Legislature cannot pay their board bills unless they economize, and that very class of men will study economy harder than they ever studied anything before in the world. For these reasons I shall support the proposition, as amended, limiting the taxation to a dollar and a quarter on each one hundred dollars.

Mr. WALWICK. I am unable to perceive what benefit can possibly be attained by any deserving to incorporate the wealth of the precious State. Now, sir, there is no gentleman here but knows that at the other side of the Territory we have a region of country which will constitute almost, if not quite, an empire; a portion of the State on the eastern lying in the vicinity. Within about six years, a town has sprung up in the County of Lander, which already contains taxable property

amounting to nearly a million and a half of dollars. It is no longer the town of Queensbury, but a thoroughly well-settled region, with about a dozen villages, and many fertile farms of three very valuable, and, I am persuaded, that by the time such men there will be thirty or forty millions of dollars, with such roads connected to supply all of those small towns, I think, I am speaking within bounds when I say that the town must raise the assessment of Queensbury, will amount to between two and seven millions of dollars.

Now do I believe that is the only portion of the Territory of this county that will be increased in like manner and proportion in the same proportion. It is well known, that the County of Washington is also rapidly increasing; that not only the towns, but the agricultural wealth, accordingly is being developed daily. The thousands of acres of land, Lands and Hamilton Counties have to be sold, and their main supplies of the produce which they are unable to furnish from this section, will have to be drawn from these more agricultural districts, enabling them as a county to assume a respectable amount of wealth. Then, in Saratoga, the wealth of that town is being largely developed, by the working of minerals and the many localities where recent discoveries of the precious metals have been made.

I think, sir, it is not good policy for members to underrate the rising prosperity and resources of any new State, for any purpose whatever. And, therefore, as we have witnessed the astonishing growth and progress of the Territory in the past, I see no reason, merely because of the little theory of land taxes, to prevent a continuance of what we should regard of the future. Any person who has ever been thereby of land taxes, as I have, in part, years in other communities, I think will be disposed to look upon the present assessment as comparatively low and moderate. For my own part, I fully agree with the gentleman from Surrey, (Mr. DeLong,) that the taxable property of the State, perhaps within one year, and certainly within two, at the furthest, will amount to forty or fifty millions of dollars.

Mr. MASON. While I believe hopefully the views advanced by the gentleman from Lansing, the able and ably representative of that county in this body, at the same time I am satisfied that even he does not fully appreciate the great wealth of that mineral region. I am aware it is reported that the banks of Lansing County are now lying in Wells, Fargo & Co's express office; and cannot be taken out for want of the funds to pay the expressage, yet notwithstanding that, and the general depression of the county, I am satisfied that it will in the future be one of the wealthiest portions of the State. I have been there myself and know something of the resources of the undeveloped resources of that county, and must be permitted, with my eloquent friend from Lansing, who possesses an imagination capable of counting cloth, where the eye of mere ordinary persons, where the mind's eye, light gilds the scene, sometimes, and where the shade dark, the sad tales of night. [Laughter.] But, sir, aside from the consideration of the reputation from Lansing, I say I am satisfied that it is the richest mineral region in the State. The world has known none of the immense, the history of created things has never presented to the mind of man any thing to compare with the enormous amount of wealth, (mixed pebbles that) occupy by the hand of nature. I am satisfied of that fact from my own observation, because I have been there and [illegible] at those villages, at their depots, their warehouses, and their stores, and their cargoes, and there is nothing more concealed by the manufacturers of corn than I was shown the wealth, material wealth, dependent on that county. It was the first season there that I started from the other day to my dissolved friend from Surrey, (Mr. Collins,) that on many on the rich mineral wealth of that county, that there shall be [illegible] assessment, that the population of Surrey County will be increased, and that county will no longer be burdened with such an overplus of inhabitants as to require the services in its District Court of three Judges.

I thought, when I arose, that I would take occasion to shear this lawyers a little, and especially the lawyers in this Convention, but I believe I will forbear. [Laughter.] The gentleman from Leader is a lawyer, and if he will excuse the allusion, so am I, sir. I was a few year twenty-five years ago, and have often been admitted to the bar since. [Merriment.] And I will tell the gentleman the reason why I abandoned the profession. I undertook a case for wrestling a deed, and managed to get him acquitted; but three weeks afterwards the fellow[illegible] stole a cow from my next neighbor. I abandoned the practice of the law from that moment, sir. [Laughter.] But however long [illegible] the practice of the evils which have darkened the page of our country's history has been the result of dishonest and dishonest legislation. We have seen its effects here with painful distinctness.

The PRESIDENT pro tem. The Chair does not think it necessary for the gentleman, but he is wandering very far from the question.

Mr. WARWICK. I hope the gentleman will have leave to proceed. Leave has been granted to one distinguished member, and why not to another?

Mr. MASON. I am willing to surrender my self-denial, and take the consequences, for I be long to nobody, and nobody belongs to me. I say we have seen the effects of dishonest legislation here. I have not been and watched it with intense anxiety, until cold chills run up my back. If words are capable of expression, we have seen that spirit manifested here in all the political discussions, that spirit which has darkened every page of our country's history. It is to be seen in partial [illegible] to favor of

specific and optional taxes, and to this extent may tend to make any attempt to commute useless, however objectionable they may be.

The PRESIDENT pro tem. The gentleman will have to confine his remarks to the question before the Convention.

Mr. MASON. I was going to show the bearing which it has; but however, I will yield the floor. [Laughter.]

Mr. LOCKWOOD. I have heard of strategy in military matters, and I have now become convinced that there is such a thing as strategy in a Constitutional Convention. Although I observe the gentleman which has been developed, yet I am fearful that upon this question there is a desire to shoot somebody. It seems that gentlemen who favor the amendment before the Convention are very much inclined to discuss legislative bodies, and I must say that my fears are somewhat shaken, when I have before me the testimony of honorable gentlemen who have filled prominent positions in such bodies, and who tell us that they were generally fortified against the passage of bills of that class and character that would rob the State treasury. Now, I will premise by saying that I never was in a legislative body, and do not know the facts, but I take the evidence of gentlemen who have been in them.

Mr. WARWICK. I rise to a point of order, that the gentleman ought not to undertake to talk on a subject which he confesses he knows nothing about.

Mr. LOCKWOOD. I am merely repeating the evidence which has been given before the Convention. Now, sir, I was an advocate of the proposition to pay members of the Legislature eight dollars a day, and it seemed to me that the Convention decided, by adopting the proposition, that eight dollars a day is no more than a reasonable compensation for a man who is qualified to fill a position of that kind. It was for the reason, as I understood, that the proposition establishing that rule of compensation was engrafted into the Constitution. But now let us see how ingeniously it is proposed to cut off such compensation. We have asserted in a previous article, the proposition, that the State shall never run into debt to an amount exceeding three hundred thousand dollars, and gentlemen fear that, having done so, the opponents of the State Government will go before the people and tell them that although by such as they may be able to support a State Government upon a reasonable amount of taxation, yet in the interim, at least for the first few years, the taxation will have to be enormous, because they cannot otherwise sustain the government, in view of the three hundred thousand dollar limitation of State indebtedness. In order to prevent that, these gentlemen now come up and magnanimously propose that, inasmuch as they have agreed to pay the members of the Legislature eight dollars a day, they will carry out the agreement, and pay them such compensation, provided that, upon a levy of only one per cent. upon the taxable property of the State, they shall have the financial skill and ability to pay all the other State expenses, and, at present prices, to throw or pass somewhere thirteen dollars a year. After they shall have made all the other appropriations, and provided for all the other functions of the Territory, and there is still money enough left, scattered from ocean to ocean, to number, they can receive their eight dollars a day, but not otherwise. I must say that if we adopt such a provision the future historians of this State will be very apt to criticise, in the language of a recent politician in the Ohio Legislature, that they are embalmed in the perfidy of our representatives.

Now, my friends, I say we must provide so that the opponents of the Constitution are going to run the country, and they are going to govern it, as parties have governed every country, and what a State Government must cost the people, and what amount of taxation must be levied in order to support it. And let us suppose a case right at point here. Suppose that the session then being adopted, it should be clearly demonstrated, to the consternation of all hands, that, when the necessary appropriations required for carrying on the State Government for a single year, 800 dollars would be left for the compensation of the Legislature? In that case I imagine, and no doubt every sensible man will agree with me, that the Legislature would be dreamt a good deal shorter; in both branches, than the Convention is at the present time.

But gentlemen tell us that we are going to collect a tax on some fifteen or twenty millions of dollars, as the gross proceeds of the mines. Now that, I insist, is an open question, when it is made in the face of the fact that under the law of the Territorial Legislature, taxing the gross proceeds of the mines, practically the amount collected has been nothing at all. I ask the gentleman from Storey (Mr. DeLong), by what rule of arithmetic, whether he goes into Duboll, or Smith, or into some of the higher branches of mathematics, he manages to figure it out, when, under the Territorial law, taxing the gross proceeds of the mines, we pay out all we receive, in the vain hope of collecting more, that under the State organization, with the same sort of enactment, we are going to collect one hundred and fifty or two hundred thousand dollars from the mines, whether it be from the gross proceeds, or any other proceeds?

Mr. DeLONG. Was it the fault of the law that nothing was collected, or of its administration?

Mr. LOCKWOOD. The same impediments will exist under a State law that have heretofore been encountered. I insist that we should look these matters fairly in the face, without dodging or dissembling. Let us go before the people upon a plain showing, and say to them: "If you desire a State Government you can have it, but you will have to pay for it."

Mr. DeLONG. Will the gentleman allow me to ask him one question? Did he favor an increase of the compensation of the Legislature, before he had made up his mind to oppose the State Constitution?

Mr. LOCKWOOD. I have never yet made up my mind to oppose the State Constitution. And here let me answer one insinuation which has been made by the gentleman's colleague from Stanislaus County (Mr. Fitch), to the effect that those who are opposed to the Constitution desire to make it as obnoxious as possible. I consider that any such charge is very improper and unfair, and so far as I am concerned, if I knew that this Constitution was going to be accepted by the people, there is not a single vote that I have given in the Convention that I would desire to alter, or to recall—not one.

Mr. BANKS. Some things have been said by those who are opposed to this proposition to which I desire very briefly to reply. The last gentleman on the floor has laid peculiar stress upon the failure of the tax on the mines which was levied by the Legislature in some year—I believe in 1853, or the year before that. Last year also a law was passed taxing the mines and mining property, and the year before, I think it was, the Legislature passed a law imposing a tax upon the gross proceeds of the mines. But it seems that the Legislature failed to enact a law under which any question could be raised to take to the courts. And that, by the way, strikes me as something remarkable in legislation. It is certainly very singular indeed, that the Legislature of this Territory was unable to frame a law upon which there could arise any question to be brought before the courts. It appears, however, that there were finally some questions taken to the courts, and though collections were delayed, I believe there has at last been a decision favorable to the law. Is not that correct?

Mr. DeLONG. Yes, sir.

Mr. JOHNSON. And the case has been appealed to the Supreme Court of the United States.

Mr. BANKS. Now, sir, in California, from 1857 up to 1861, the Legislature passed various laws on the same subject, without success, but at last obtained an efficient revenue law. I think the Legislature of that State has been singularly unfortunate in that kind of legislation; but I do not believe, with the light of the experience of California before us, that we are likely to repeat its blunders. It is not strange, however, when the Legislature of California made such mistakes, that the Legislature of 1863 in this Territory should have failed to pass such a revenue law as perhaps ought to have been passed. At any rate, I do not conceive that any defect which may have been discovered in that law should necessarily lead us to the conclusion that no law can be passed for the taxation of the proceeds of the mines which will be efficient. I believe, on the contrary, that the simple mode of taxation which has been adopted by the United States Government will be found to be efficient in all cases, and will raise as much revenue from that source as should be paid by that kind of property.

Again, the gentleman from Ormsby, (Mr. Lockwood) has dwelt with a good deal of earnestness upon what he seems to regard as a want of charity for the Legislature. He appears to have a particularly friendly feeling towards the Legislature, and takes especial pains to repel promptly anything which he regards as an attack upon it. Now, although I do not pretend to join in that kind of popular clamor, which amounts to universal and indiscriminate denunciation of all legislatures and Legislatures, yet I will say that in the State of California since the year 1851, at any rate, there has never been a session in which all the real work was not performed within the space of sixty days.

A Member. Time!

Mr. BANKS. I think I have a minute left, sir. Let me say this, in conclusion, that if we adopt this limitation, the Legislature will accommodate itself to circumstances, just as an individual accommodates himself to his income, governs his expenses according to it, and generally gets along about as well on an income of one thousand dollars as he would on five thousand, or even ten thousand dollars a year. We propose to give the Legislature to understand that it is limited, as we would an individual in our employment. We say "there is your income; now govern yourself accordingly." And my word for it the Legislature will do it. Under this provision I do not believe the sessions of the Legislature will continue beyond about one month.

Mr. COLLINS. I hardly know, sir, what I can say on this subject within the space of five minutes, but I will begin where my friend from Humboldt (Mr. Banks) left off—with the necessity for economy. If we make it a matter of necessity, economy is sure to follow. Why, sir, look at the economy of this Convention, for example, as compared with that of last year. There were incurred bills for printing, and a variety of expenses, which this Convention has entirely avoided, and yet here we are performing our duty nearly, if not quite, as well as if we had had ten, fifteen, or twenty thousand dollars to spend? Now I regard the proposition of my colleague (Mr. Chapin) as well calculated to force the Legislature into economy.

The gentleman from Ormsby, (Mr. Johnson,) in opposing the proposition, takes exception to some of the figures which have been presented by my colleague. Well, it may be that in many respects his figures are too small, but if that be so, why should we not appoint a committee to be composed of gentlemen who are acquainted with these matters, and let that committee bring in a statement for the information of the Convention, showing what the proposed State Government will probably cost, and what the Territorial Government has cost. Then, knowing the cost of each, we can readily see the differ-

Mr. CHAPIN. It should so read, if it does not.

Mr. KENNEDY. That is the intention, certainly; will the Secretary read that part again?

The SECRETARY. It reads: "For the first three years after the adoption of this Constitution the Legislature shall not levy a tax, for State purposes, exceeding one per cent. per annum," etc.

Mr. CROSMAN. Very well. Now I move to amend by striking out "three" and inserting "two," so as to read "for the first two years," etc.

Mr. FITZELL. I second that amendment.

Mr. CROSMAN. I think there are good reasons for making the change. It has been urged that this amount of taxation will be sufficient to carry on the State Government, and if so we shall be running behind a little perhaps in our State expenses.

Mr. FITCH. Then that would be used as an argument against us.

Mr. CROSMAN. Well, if that is the case we can reply that property will be increasing rapidly during the interim, and it may be that after two years one per cent. will be sufficient. We have provided, at any rate, for all the State officers to be elected, for two years, and after that time it may be advisable to leave the matter open for the Legislature, unrestricted by any constitutional provision. Therefore, I hope the amendment I have offered will prevail.

Mr. CHAPIN. I hope that amendment will not be made. I am sorry that I cannot accept it at once, and so put a stop to all talk about it, but I feel like this, that if we really cannot run this State Government on a tax of one and one-quarter per cent. per annum, then for my part I do not want to adopt any State Government. I would certainly oppose it, if I thought the expense was going to exceed that amount. Here we can get up an aggregate of expenditure amounting to one hundred and sixty-six thousand dollars a year, under the Territorial Government, and if the revenue derived from a taxation of one and one-fourth per cent. is not going to be sufficient to carry on our State Government, I am willing to remain in the helpless condition for another four years, if necessary. We have a taxable property which ought to yield an amount of revenue of four hundred thousand dollars, upon a tax of one per cent., and another one hundred thousand upon the additional tax of one-fourth of one per cent. Then, in addition to all that, we have the bonds for three hundred thousand dollars which the Legislature is authorized to issue, under the provision heretofore adopted, making one hundred thousand dollars a year, for the three years, to supply any possible deficiency. Now I believe the privilege of contracting a loan to that amount is not going to be necessary, and I wish it could be stricken out.

But at any rate I want to compel a system of economy. I want to have every man who is elected to office, or sent to the Legislature, know before he comes here that he has got to economize—that he must economize as much as we have been obliged to in this Convention. Why, sir, look at our bills. Our worthy President is of opinion that their ladies' amount will not equal one-fourth, and I do not think they will amount to more than one-tenth as much as the expenses of the last Convention. The reason is, because the necessity was laid upon us. And have not we got along comfortably and respectably? So it will be with men in the Legislature, if the same necessity is imposed upon them. I hope the gentleman from Lyon will not be disposed to insist upon his amendment, for I want to have the Legislature work under pressure for three years at least. Then if we are in a condition to branch out, and to move liberal, we can do so.

The PRESIDENT pro tem. How much does the gentleman think the State would realize from those bonds to the amount of three hundred thousand dollars, if they were sold?

Mr. CHAPIN. I do not know, but if there is proper management they can probably be worked off to good advantage.

The question was taken on the amendment offered by Mr. Crosman, and it was not agreed to.

The question was then taken by yeas and nays, on the motion of Mr. Chapin, to recommit the article, with instructions to amend, by inserting the section as proposed by him, and subsequently modified, and the vote was—yeas, 16; nays, 7—as follows:

Yeas—Messrs. Banks, Belden, Browne, Chapin, Collins, Crosman, DeLong, Fitzell, Fuller, Gibson, Kennedy, Mason, McClinton, Proctor, Warnick, and Wetherell—16.

Nays—Messrs. Crawford, Hawley, Kleinsel, Lockwood, Marvin, Tagliabue, and Mr. President—7.

So the motion was agreed to.

The PRESIDENT pro tem. appointed as the Special Committee, in accordance with the motion, Messrs. Chapin, Collins, and McClinton.

Mr. CHAPIN, from the Special Committee just appointed, reported back Article XVII, entitled Schedule, amended according to the instructions of the Convention.

The PRESIDENT pro tem. If there is no objection the rules will be suspended, and the amendment adopted at this time.

Mr. TAGLIABUE. Does not the report go on the general file?

The PRESIDENT pro tem. I said if there was no objection the rules would be suspended.

Mr. TAGLIABUE. I object; I want to keep the amendment out, under the rules, if I can do so.

Mr. CHAPIN. I hope the gentleman will not object to suspending the rules; it is simply to save time.

Mr. TAGLIABUE. I want to beat the amendment.

Mr. CHAPIN. Oh, the gentleman cannot do that, as he must be satisfied.

The question was taken on suspending the

ration, and on a division the vote was—ayes, 19; noes, 5. So the rules were suspended.

The question was then taken on adopting the section as reported by the special committee, and it was adopted.

The question was next taken by yeas and nays on the final passage of Article XVII, as amended, and the vote was—yeas, 19; nays 7—as follows:

Yeas—Messrs. Bailey, Bailhache, Bowman, Chapin, Gallaher, Granger, Hallett, Kinkead, Palmer, Phelps, Proctor, Rowe, McCulloch, Turney, Warwick, and Wilkinson—19.

Nays—Messrs. Crockett, Hatley, Kinkead, Kennedy, Rowland, Tagliabue, and Mr. Chairman—7.

So the article was passed.

[The PRESIDENT in the chair.]

Mr. KINKEAD. If it is in order now, I suggest that the gentleman from Esmeralda (Mr. Rowe) have leave to finish his remarks. [Merriment.]

The PRESIDENT. The article will now be referred to the Committee on Phraseology.

THE ELECTION ORDINANCE.

The Convention took up, on its third reading, the Election Ordinance, providing for the election by the people upon the Constitution, and the voting of volunteers in the service of the United States at certain elections, as amended by the special committee to which it had been recommitted for that purpose.

The SECRETARY read the preamble, and Section 1, as follows:

WHEREAS, The Enabling Act passed by Congress, and approved March 21st, A. D. 1864, requires that the Convention charged with the duty of framing a Constitution for a State Government, "shall provide by ordinance for submitting said Constitution to the people of the Territory of Nevada for their ratification or rejection," on a certain day prescribed therein; therefore, this Convention, organized in pursuance of said Enabling Act, do establish the following

ORDINANCE.

SECTION 1. On the first Wednesday of September, A. D. 1864, this Constitution shall be submitted to the qualified electors of said Territory, at the several election districts, for their approval or rejection; and at that time, on the first Tuesday after the first Monday of September, A. D. 1864, there shall be a general election in the several counties of said Territory for the election of State officers, Supreme and District Judges, members of the Legislature, representative in Congress, and three Presidential electors.

THE DAY OF ELECTION.

The PRESIDENT. I wish to know whether any gentleman of the Convention has any official information that Congress has changed the law in regard to the time when the vote shall be taken on the Constitution. The only information I have is what I have seen published in newspaper correspondence.

Mr. CHAPIN. I have called on Governor Nye for the purpose of ascertaining whether he has received any official advice of a change in the day of election, and he informed me that he had not; that he only had the general report, derived from the newspapers, which the rest of us have; but he presumed that Congress had complied with the request which was forwarded from here asking for such change.

Mr. TAGLIABUE. The only report I have seen, stated that the time fixed by Congress was the first day of September, not the first Wednesday, and that report I believe has never been contradicted.

The PRESIDENT. Would it not be well to let this Section 1 provide that the Constitution shall be submitted at the time prescribed by the Act of Congress? The only official information which the Governor has received is the original Enabling Act, which provides for holding the election in October. If the Constitution should not be submitted at the proper time our labors will have proven futile; but by making this change, if there has been any misinformation, we will have provided for it.

Mr. WARWICK. Would it not be well enough to telegraph at once for the desired information, and get an answer before we conclude our session? Possibly we can get an answer this evening.

Mr. CHAPIN. Oh no; it will take two or three days, perhaps, to get an answer from Washington.

The PRESIDENT. I am advised that a petition was forwarded, asking to have the time changed so as to have the Constitution submitted to the people at the time of the Territorial election, and I think it is altogether probable that change has been made by Congress. Nevertheless, the Governor has not been notified of such change, whilst he has received an official notification of the approval of the original Act of Congress, and it might be well, therefore, in order to provide for a possible contingency, to amend the section so as to declare that the Constitution shall be submitted at the time prescribed by Congress. Then if it should happen that there has been no change, the election will be held on the day designated in the original Enabling Act.

Mr. PROCTOR. It appears to me that the question raised is one of the utmost importance. If we should ascertain, after we have adjourned and gone home, that the time for the election has not been changed since the passage of the original Act of Congress, all we have done will go for nothing. And even now, if we should ascertain that to be a fact, there would be a great many important changes necessary to be made. We have provided for the election of officers at the general election in November, have made provision for the time when they shall go into office, and so on, all based on the supposition that such change has been made in the time of the election. It does seem to me that we ought to take measures at once, by telegraphing or otherwise, to ascertain whether or not any such law of Congress is in existence.

The PRESIDENT. I have myself very little doubt that the change has been made, although we have no official information of the fact.

Mr. COLLINS. I have no knowledge of the

matter myself, save and except what I have seen in the newspapers, but I presume that if any subsequent action was taken on the subject by Congress, it was based on the petition which was sent from this Territory asking for such a change in the law that the vote on the Constitution might be taken on the day of the Territorial election. It seems to be evident that some change was made, or the newspapers would not have made any report in regard to it. Still, although we have every reason to believe the change was made, inasmuch as we have no authentic or official information, perhaps it would be well to leave the time for the election blank, and endeavor to have the Governor telegraph immediately for authentic information. He may perhaps obtain an answer by the time the article is engrossed, and then we can fill in the correct day.

The PRESIDENT. In reply to the remarks made by the gentleman from Nye (Mr. Proctor) I wish to say that I think the time of submitting the Constitution to the people will not necessarily make any very material difference in respect to what we have done. The objection seems to apply only to the ordinance providing for the election, because we propose to continue the Territorial officers, in any event, under the State organization.

Mr. CROSMAN. According to my recollection, the first report we received said the time for the election on the Constitution had been changed to the first day of September, not the first Wednesday.

The PRESIDENT. I have seen three different reports on the subject. The first was by overland telegraph, stating that the time had been changed to the first day of September; then the correspondent of the Sacramento Union wrote that it was fixed for the first Tuesday of September; and lastly, a letter from J. W. Simonton, correspondent of the San Francisco Bulletin, referred to the matter in about these words: "It may be old news to the people of Nevada, but still it may be well to mention the fact that the Act fixing the first Wednesday of September as the time for the election on their State Constitution has passed." That would make the time correspond with our Territorial election, and I have very little doubt that the latter statement is correct.

Mr. CROSMAN. I know I came to the Convention with the impression on my mind that the election was to be on the first day of September.

The PRESIDENT. It may possibly be that by some accident, although the bill has passed both houses of Congress, it may have been neglected, and failed to receive the approval of the President. These reports which we have received all speak of the action of Congress alone. We have never received anything, even from the correspondents of the newspapers, mentioning the Act as having been approved and signed, or as having become a law.

Mr. McCLINTON. I will move, in order to cut off further discussion, that the section be amended so as to submit the Constitution on the day prescribed in the Enabling Act. Then, if it is necessary, we can telegraph immediately to the President, or some other proper authority, and find out the correct date.

Mr. WARWICK. That will do no good, if we cannot get an answer till after the Convention has adjourned.

Mr. McCLINTON. It will make no difference, with that amendment, what the day may be. If the time fixed by Congress is the 24 of October the election will be held on that day, or if it be the first Wednesday in September it will be held on that day. It will be understood that the Constitution is to be voted on upon the day provided for submitting it, by the Enabling Act, whatever day that may be.

Mr. BANKS. I like the suggestion of the gentleman from Storey, (Mr. Collins,) to leave the date blank until the latest possible moment. I think that is the proper course. Then let the Governor telegraph on and get official information, and if it is possible to obtain an answer to the inquiry in season, we can incorporate the correct date in the blank. If we find it impossible to state the time definitely, even at the last moment, then we may say the election shall be held at such time as is prescribed by Act of Congress. There will certainly be ample time, before the Governor issues his proclamation for the election, to obtain accurate information, and in his proclamation he will of course designate the proper day. In what condition is the ordinance before the Convention?

The PRESIDENT. It is on the third reading.

Mr. BANKS. I move, then, to refer it to a special committee with instructions to strike out of Section 1 these words, "first Wednesday of September, A. D. 1864," leaving the date blank.

Mr. McCLINTON. I will withdraw my motion, then, and I hope we shall telegraph immediately. We may get an answer even before the Convention adjourns to-night.

Mr. CHAPIN. I dislike the indefinite shape in which it seems we are going to leave this matter. If Congress has really made no amendment of the law then all our labors pass for nothing, because if this Constitution is only to be submitted to the people in October, we cannot carry out its provisions, and it all falls to nought. I would like to inquire whether, in case we fix the date of the election as we have it now, it is believed that there would be any danger that it would interfere with our admission into the Union as a State, even though it should turn out that another day has been fixed by Congress?

The PRESIDENT. There is no doubt in my mind, that a vote of the people, taken at any other time than that which is fixed by the Act of Congress, would be a nullity. The original Enabling Act, which is the only legislation of which we have official information, provided that the election should be held on the second Tuesday in October, which will be

the 13th of the month, and it was with a view to having that election on the same day as the general election, thereby avoiding the trouble and expense of two elections, that I took part in forwarding the petition which was sent from here to the Senate and House of Representatives, signed by many of the prominent citizens of the Territory, asking that such change might be made. The idea was that the change would afford an additional date for the election of State officers, and also enable the people of the State to participate in the Presidential election also.

Mr. CRAPO. I am very much surprised that the Governor has not already answered the fact as to the action of Congress.

Mr. COLLINS. I will state that I have had a conversation with the Governor Nye on this very subject, and he is of opinion that Congress has made the amendment, although he has no such official information, changing the day of the election to the first Wednesday of September. He is also of the opinion that, even if no such act has been passed, the Government will accept the change on our part, and it will be no obstacle to our admission into the Union.

The PRESIDENT. Without intending any disrespect to Governor Nye, or questioning his legal understanding, I must say, nevertheless, I am surprised that he should have advanced such a legal opinion.

Mr. COLLINS. I regard it more as a common sense opinion than as a legal opinion.

The PRESIDENT. I do not think it is even common sense. Congress prescribed one particular day for the election; and if we provide that the vote shall be taken on a different day the President could have no authority to declare by proclamation that we are admitted into the Union.

Mr. COLLINS. The President might not look upon that as a material matter. I have observed, in my experience, that when men want very much to do a thing they always find a way to do it, and if they want to defeat a thing they are generally able to find a way to defeat it. Now I think the President might reason on the subject somewhat in this way: "Nevada is a great distance from the capital of the Nation; there has been some misunderstanding, it is true, about the date of the election, but she has completely fulfilled the spirit of the Enabling Act. Although there is a discrepancy in regard to the day of the vote, yet she has fully come up to the spirit of all the requirements of the law. Congress wants her to become a State, I want her, and in the language of one of my predecessors, I will assume the responsibility." I should not marvel at all if the President should reason thus, even though there might be a violation of the strict letter of the legal requirements of the Act of Congress.

The PRESIDENT. But it would not depend upon the act of the President of the United States. The legality of the act of admission depends rather upon a fulfillment of the conditions precedent, and one of those conditions is that the vote of the people upon the Constitution shall be had on a given day. Though the President might assume the responsibility of proceeding in the immediate admission of the State, yet the legality of that proceeding would be questionable, and would be liable to be attacked in the courts. The act of admission depending upon the conditions precedent, and they not having been complied with, would the President's proclamation amount to anything?

Mr. COLLINS. What would be the difference, practically, on this side of the continent, or the other side?

The PRESIDENT. It might make a difference both on this side and the other.

Mr. COLLINS. If Congress, when it meets on the first of December next, should remedy the matter by legalizing the act of admission, I do not see that it would make any difference, and I have no doubt that Congress would give us that remedy. In that case what would be the effect on this side, of our making a mistake in the date?

The PRESIDENT. My judgment is that it might occasion a conflict between the authorities of the Territorial and State Governments. There is no question but that Congress could legalize the act, and then our admission would be accomplished, but in the meantime we might witness a repetition of the scenes of the Dorr war, in Rhode Island.

Mr. COLLINS. This conflict of opinion about the propriety of voting upon the Constitution upon a day which may perchance be different from that designated by Congress, may embarrass us more than anything else, and I fear it will. I hope, therefore, that the Governor will be requested by the Convention to telegraph immediately to the President of the United States, or some other officer, in order that we may have the necessary information, if possible, before the Convention adjourns.

The PRESIDENT. We might leave it blank until we can procure the needed information, and if we do not receive it in time, we can then simply provide that the Constitution shall be submitted on the day designated in the Act of Congress. It will not be necessary in that case to specify the day, although if we knew the exact date it would certainly be better to name it in the ordinance.

Mr. COLLINS. What objection is there to telegraphing, so as to obtain the information as soon as possible?

The PRESIDENT. None whatever.

Mr. BROSNAN. We shall get along better and faster, I think, by doing one thing at a time. I am in favor of the proposition of the gentleman from Humboldt, (Mr. Banks), to strike out the date and leave it blank for the present. Let us do that, and then we can authorize the Committee on Enrollment, which has already been provided for, to fill the blank in the original copy with the correct date.

The PRESIDENT. The committee might do

that, certainly, with quite as much propriety as the clerks of the Legislature of the year 1863 could be authorized to supply the blanks in the Act which was passed calling the first Constitutional Convention.

Mr. FRITZELL. I have thought until the present time, that this Convention was composed of statesmen and philosophers, but I begin to alter my opinion. It is very singular, certainly, that the most important point is not known to the Convention after it has been in session over three weeks. I am rather astonished that the President has not ascertained the fact before this time.

Mr. PROCTOR. I will move that the President of the Convention be instructed to telegraph to the President of the United States to obtain this information.

The PRESIDENT. The Governor of the Territory would be more appropriate.

Mr. PROCTOR. No; I think the President of the Convention is more appropriate. It seems to me that it would come with more force from him, for then the President or Secretary of State would see at once the object of the inquiry, and the importance of returning an immediate answer. If it came from the Governor they might possibly not appreciate the importance of it.

The PRESIDENT. I hope the motion will be modified so as to request the Governor to send the despatch. I am sure he will do it cheerfully.

Mr. HAWLEY. I will move to amend the motion so as to request the Governor to telegraph.

Mr. BANKS. Let us do one thing at a time. The question is, as I understand, on my motion to recommit with instructions to strike out the date.

The PRESIDENT. If there is no objection, the gentleman from Storey, (Mr. Collins,) will be requested to act as a committee—

Mr. HAWLEY. I have moved to substitute the Governor of Nevada Territory.

Mr. PROCTOR. I will move that a committee of three be appointed by the Chair to wait upon the Governor immediately, and request him to telegraph to the President of the United States.

Mr. KINKEAD. A committee of one will be better. If you have a committee of three it will leave us without a quorum, and one will do just as well.

Mr. PROCTOR. I have no objection.

The PRESIDENT. Gentlemen will suspend a moment, until the Secretary prepares a resolution.

QUESTION OF PRIVILEGE.

Mr. HAWLEY. I rise to a question of privilege. I know it is rather informal, but I may as well do it now, whilst we are waiting. I stated the other day that a petition had been in circulation in California asking for the levy of a tax of five mills on the dollar—that I think was the amount I named—for educational purposes. I was mislead as to the amount by the memory of my lieutenant, although I was myself aware of the fact that some proposition of the kind had been made. The fact is, that the petition referred to asked for a tax of only half a mill on the dollar. If the report of our proceedings should ever be printed, I would not like to have such a misstatement contained in my record, and hence I make the correction.

The PRESIDENT. The resolution is now prepared; the Secretary will read it.

The SECRETARY read, as follows:

Resolved, That Mr. Proctor be, and he is hereby appointed a committee of one to wait on his Excellency the Governor, and respectfully ask him to telegraph to the authorities at Washington for information as to the precise day prescribed by the Act of Congress for submitting the Constitution to the people for their ratification.

The resolution was adopted by unanimous consent.

The PRESIDENT. The gentleman from Nye (Mr. Proctor) will please attend to that duty.

ELECTION ORDINANCE—AGAIN.

Mr. COLLINS. Now let us proceed with the reading.

The PRESIDENT. If there is no objection, the amendment proposed by the gentleman from Humboldt (Mr. Banks) will be adopted, without the formality of recommitment.

No objection being made, the amendment was adopted by unanimous consent.

The PRESIDENT. The Secretary will now read the Ordinance, commencing with Section 1.

The SECRETARY read Sections 1 to 6, inclusive, as follows:

SECTION 1. On the ——, A. D. 1864, this Constitution shall be submitted to the qualified electors of said Territory, in the several counties thereof, for their approval or rejection; and further, on the first Tuesday after the first Monday of November, A. D. 1864, there shall be a general election in the several counties of said Territory, for the election of State officers, Supreme and District Judges, members of the Legislature, Representative in Congress, and three Presidential electors.

SEC. 2. All persons qualified by the laws of said Territory to vote for Representatives to the General Assembly on the said 21st day of March, including those in the army of the United States, both within and beyond the boundaries of said Territory, and also all persons who may by the aforesaid laws be qualified to vote on the ——, A. D. 1864, including those in the aforesaid army of the United States, within and without the boundaries of said Territory, may vote for the adoption or rejection of said Constitution on the day last above named. In voting upon this Constitution, each elector shall deposit in the ballot-box a ticket, whereon shall be clearly written or printed "Constitution, Yes," or "Constitution, No," or such other words that shall clearly indicate the intention of the elector.

SEC. 3. All persons qualified by the laws of said Territory, to vote on the Tuesday after the first Monday of November, A. D. 1864, including those in the army of the United States, within and beyond the boundaries of said Territory, may vote on the day last above named for State officers, Supreme and District Judges, Members of the Legislature, Representative in Congress, and three Presidential electors to the Electoral College.

Sec. 4. The elections provided in this ordinance shall be holden at such places as shall be designated by the Boards of Commissioners of the several counties in said Territory. The Judges and Inspectors of said elections shall be appointed by said Commissioners, and the said elections shall be conducted in conformity with the existing laws of said Territory in relation to holding the general elections.

Sec. 5. The Judges and Inspectors of said elections shall carefully count each ballot, immediately after said elections, and forthwith make duplicate returns thereof to the Clerks of the said County Commissioners of their respective counties; and said Clerks, within fifteen days after said elections, shall transmit an abstract of the votes, including the soldiers' vote, as hereinafter provided, given for State officers, Supreme and District Judges, Representative in Congress, and three Presidential electors, inclosed in an envelope, by the most safe and expeditious conveyance, to the Governor of said Territory, marked "Election Returns."

Sec. 6. Upon the receipt of said returns, including those of the soldiers' vote, or within twenty days after the election, if said returns be not sooner received, it shall be the duty of the Board of Canvassers—to consist of the Governor, United States District Attorney, and Chief Justice of said Territory, or any two of them—to canvass the returns, both Civil and Military, in the presence of all who may wish to be present, and if a majority of all the votes given upon this Constitution shall be in its favor, the said Governor shall immediately publish an abstract of the same and make proclamation of the fact, in some newspaper in said Territory, and certify the same to the President of the United States, together with a copy of the Constitution and ordinances. The said Board of Canvassers, after canvassing the votes of the said November elections, shall issue certificates of election to such persons as were elected State officers, Judges of the Supreme and District Courts, Representative in Congress, and three Presidential electors. Thirty days after the President of the United States shall issue his proclamation declaring this State admitted into the Union on an equal footing with the original States, this Constitution shall thenceforth be ordained and established as the Constitution of the State of Nevada.

The PRESIDENT. What is that thirty days for?

Mr. COLLINS. It will take about thirty days to bring the official information?

The PRESIDENT. But the Enabling Act expressly provides, that upon the issuing of the President's proclamation the State shall be admitted into the Union. It then becomes an accomplished fact, and nothing further is required, on the part of Congress, or on the part of the State.

Mr. CHAPIN. And we have provided for telegraphing the information of the issuing of the proclamation.

Mr. BANKS. I wish to inquire how that arrangement has been made?

Mr. CHAPIN. By a resolution which has been passed by the Convention.

Mr. COLLINS. So far as telegraphing the information is concerned, we might provide that the Constitution shall take effect when the information reaches us. But the Enabling Act does not say when we shall become a State, nor when our Constitution shall take effect. The language of the Act is:

"Whereupon it shall be the duty of the President of the United States to issue his proclamation, declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress."

Mr. McCLINTOCK. And we have already passed a resolution requesting the President to inform us by telegraph of the issuing of his proclamation.

The PRESIDENT. I think it is very plain, from the language of the Act, that we become a State in the Union at once.

Mr. BROSNAN. Yes, sir; we become a State, instanter.

Mr. COLLINS. I have made an alteration which I think will meet the approval of the Convention, striking out the words "thirty days after," and inserting instead the word "when," so that the latter clause will read as follows:

"When the President of the United States shall issue his proclamation declaring this State admitted into the Union on an equal footing with the original States, this Constitution shall thenceforth be ordained and established as the Constitution of the State of Nevada."

The amendment suggested was agreed to by unanimous consent.

The SECRETARY read Sections 7 to 10, inclusive, as follows:

Sec. 7. For the purpose of taking the vote of the electors of said Territory who may be in the army of the United States, the Adjutant-General of said Territory shall, on or before the 5th day of August next following, make out a list in alphabetical order, and deliver the same to the Governor, of the names of all the electors, residents of said Territory, who shall be in the army of the United States, stating the number of the regiment, battalion, squadron of cavalry, battery of artillery, and the letter of the company to which he belongs, and also the county or township of his residence in said Territory.

Sec. 8. The Governor shall classify and arrange the aforesaid returned list, and shall make therefrom separate lists of the electors belonging to each regiment, battalion, squadron, and battery from said Territory in the service of the United States, and shall, on or before the fifteenth day of August following, transmit, by mail or otherwise, to the commanding officer of each regiment, battalion, squadron, and battery, a list of electors belonging thereto, which said list shall specify the name, residence, and rank of each elector and the company to which he belongs, if to any, and also the county and township to which he belongs, and in which he is entitled to vote.

Sec. 9. Between the hours of nine o'clock, A. M., and three o'clock, P. M., on each of the election days hereinbefore named, a ballot-box or suitable receptacle for votes shall be opened under the immediate charge and direction of three of the highest officers in command, for the reception of votes from the electors whose names are upon said list, at such place where a regiment, battalion, squadron, or battery of soldiers from said Territory in the army of the United States may be on that day; at which time and place said electors shall be entitled to vote for all officers for which by reason of their residence in the several counties in said Territory they are authorized to vote, as fully as they would be entitled to vote in the several counties or townships in which they reside, and the votes so given by such electors, at such time and place, shall be considered, taken, and held to have been given by them in the respective counties and townships in which they are resident.

Sec. 10. Each ballot deposited for the adoption or rejection of this Constitution, in the army of the United States, shall have distinctly written or printed thereon, "Constitution, Yes," or "Constitution, No;" and further, for the election of State officers, Supreme and District Judges, members of the Legislature, Representative in Congress, and three Presidential Electors, the names and office of the person voted for shall be plainly written or printed on one piece of paper. The name of each elector voting as aforesaid shall be

checked upon the said list at the time of voting by one of the said officers having charge of the ballot-box. The said officers having charge of the election shall count the votes and compare them with the checked list immediately after the closing of the ballot-box.

Mr. KENNEDY. I want inserted there, after "Constitution—no," the words "or words of a similar import."

Mr. COLLINS. Suppose we say, "shall have substantially written or printed thereon," instead of "distinctly."

Mr. TAGLIABUE. I do not think it is sufficient.

Mr. McCLINTON. I claim the floor for about three-quarters of a minute. I think that amendment has heretofore been adopted.

Mr. KENNEDY. I simply wish to say that the word "substantially" does not cover my idea. My motion is, to insert after "Constitution—no," the words, "or words of a similar import."

Mr. COLLINS. I have no objection.

The amendment proposed by Mr. Kennedy was adopted by unanimous consent.

Mr. PROCTOR. I desire to report to the Convention, Mr. President, that I have called at the Governor's house, and cannot find his Excellency. I understand that he has gone to the warm springs. Neither was his private Secretary in. I suppose the Governor will be back very soon.

The PRESIDENT. If there is no objection, further time will be granted to the committee appointed to wait on the Governor relative to the telegraphic dispatch. The Secretary will proceed with the reading of the Ordinance.

The SECRETARY read Sections 11 and 12, as follows:

SEC. 11. All the ballots cast, together with the said voting list checked as aforesaid, shall be immediately sealed up and sent forthwith to the Governor of said Territory, at Carson City, by mail or otherwise, by the commanding officer, who shall also make out and certify duplicate returns of votes given according to the forms hereinafter prescribed, seal up and immediately transmit the same to the said Governor, at Carson City, by mail or otherwise, the day following the transmission of the ballots, and the voting list herein named. The said commanding officer shall also immediately transmit to the several County Clerks in said Territory, an abstract of the votes given at the general election in November, for county officers, marked "Election Returns."

SEC. 12. The form of returns of votes to be made by the commanding officer to the Governor and County Clerks of said Territory, shall be in substance as follows, viz:

Returns of soldiers' votes in the (here insert the regiment, detachment, battalion, squadron, or battery.)

(For first election—On the Constitution.)

I——, hereby certify, that on the——— A. D. 1864, the electors belonging to the (here insert the name of the regiment, detachment, battalion, squadron, or battery) cast the following number of votes for and against the Constitution for the State of Nevada, viz:

"Constitution—Yes."—(Number of votes written in full and in figures.)

Against "Constitution—No."—Number of votes written in full and in figures.)

(Second election—For State and other officers.)

I——, hereby certify, that on the first Tuesday after the first Monday in November, A. D. 1864, the electors belonging to the (here insert as above) cast the following number of votes for the several offices and persons hereinafter named, viz:

For Governor.—(Names of persons voted for, number of votes for each person voted for written in full, and also in figures, against the name of each person.)

For Lieutenant-Governor.—(Names of candidates, number of votes cast for each, written out and in figures, as above.)

Continue as above till the list is completed.

Attest, I, A. B.,

Commanding officer of the (here insert regiment, detachment, battalion, squadron, or battery, as the case may be.)

Mr. COLLINS. That word "for" should be allowed to remain, as in the printed copy, so as to read "for Constitution—Yes," and "against Constitution—No." Just leave the word "for" there as it is now.

By unanimous consent the word "for" was inserted, in accordance with Mr. Collins' suggestion.

The SECRETARY read Sections 13 and 14, as follows:

SEC. 13. The Governor of this Territory is requested to furnish each commanding officer within and beyond the boundaries of said Territory, proper and sufficient blanks for said returns.

SEC. 14. The provisions of this ordinance in regard to the soldiers' votes, shall apply to future elections under this Constitution, and be in full force until the Legislature shall provide by law for taking the votes of citizens of said Territory in the army of the United States.

Mr. KENNEDY. As I understood the Secretary to read, the Governor is requested to furnish blanks to commanding officers outside of the Territory. He should also furnish them inside the Territory.

Mr. COLLINS. That is the way it reads—"within and beyond the boundaries of said Territory."

Mr. CROSMAN. In Section 12, I do not see the necessity of employing those two negatives, and I will move to amend by striking out the words "for" and "against."

Mr. COLLINS. I believe that is the usual way of making the returns—"for" and "against."

The PRESIDENT. Would not the same result be obtained by striking out the words "yes" and "no." It will then simply read, "for Constitution," and "against Constitution."

Mr. CROSMAN. Very well; I will move to make those amendments.

Mr. FRIZELL. If the returns are made out "against the Constitution—no," that would really be the vote for the Constitution. The inquiry would be: "Do you vote against the Constitution?" "No!" [Merriment.]

The PRESIDENT. The Secretary will read the sentence as proposed to be amended.

The Secretary read, as follows:

I——, hereby certify, that on the——— A. D. 1864, the electors belonging to the (here insert the name of the regiment, detachment, battalion, squadron, or battery,) cast the following number of votes for and against the Constitution for the State of Nevada, viz:

For Constitution—(number of votes written in full and in figures.)

Against Constitution—(number of votes written in full and in figures.)

Mr. COLLINS. I will accept those amendments.

The amendments suggested by Mr. Crosman were agreed to by unanimous consent.

DAY OF ELECTION—AGAIN.

Mr. BANKS. I was under the impression that we might possibly get the information relative to the day fixed by Congress for submitting the Constitution to the people before the time of our final adjournment, but if it is certain, as I now understand it to be, that we cannot, I think perhaps we had better provide for the appointment of a committee with authority to fill the blanks whenever the information shall come to hand.

The PRESIDENT. Would it not be well to fill the blanks with words reading thus: "at the time provided by the Act of Congress?"

Mr. BANKS. As it is near five o'clock, I move to postpone the time for recess for ten minutes.

The PRESIDENT. If there is no objection, the recess will be postponed for ten minutes.

Mr. COLLINS. I hope those blanks will be allowed to remain until the last thing we do. If we are going through the whole instrument to-morrow, as has been suggested, the Election Ordinance will be the last thing, and possibly we may not be able to get through to-morrow.

The PRESIDENT. The article has already passed to engrossment. Even if the Governor should now telegraph to Washington, no answer could possibly be received to-night, as the hour is so late now that no dispatch can be delivered, and if it were delivered no reply could be had to-night. I will therefore suggest, that instead of supplying a date, we insert, wherever reference is made to the time for submitting the Constitution to the people, words to this effect: "On the day provided by Act of Congress."

Mr. BANKS. The President will remember that if a dispatch starts from here at this time it will arrive in Washington two or three hours earlier.

The PRESIDENT. But the gentleman from Nye (Mr. Proctor) has not yet been able to confer with the Governor.

The SECRETARY. By leave of the Convention, I will state that here is a dispatch, in the *Gold Hill News* of this evening, dated Salt Lake, which says the overland wires are down east of Fort Laramie.

Mr. COLLINS. Could we not empower the Committee on Re-enrollment to fill the blank.

The PRESIDENT. It appears to me that such authorization would be rather unusual.

Mr. COLLINS. We are in an unusual situation.

The PRESIDENT. I think we can avoid the difficulty by inserting "on the day provided by Act of Congress." I would like to hear the opinion of the Chairman of the Judiciary Committee (Mr. Brosnan) upon the subject.

Mr. COLLINS. But then it does not appear in the Constitution what is the day of its birth.

The PRESIDENT. There are several things to be done hereafter, before its complete adoption.

Mr. COLLINS. Well, any way to get out of the difficulty.

Mr. BROSNAN. I think we must make some provision within the Constitution for notifying the County Commissioners, in order that they may call the election, because otherwise they have nothing official to guide them. Therefore, when we send out the Constitution, we should at the same time provide for holding an election, upon some specified day, for its adoption or rejection.

The PRESIDENT. Is there not a provision that the Executive shall issue his proclamation, calling the election?

Mr. COLLINS. I do not think there is.

Mr. BANKS. It is presumed, of course, that the election will be held under the Governor's proclamation.

The PRESIDENT. Proclamation may be made of the fact, whether we require it or not, and the day provided by the Act of Congress may be designated in the proclamation.

Mr. COLLINS. The language of the Enabling Act is declaratory and positive. It says the Convention shall provide by ordinance for submitting said Constitution to the people on the day named, which will be the first Wednesday in September if the amendatory act has been passed, as is supposed. And Section 1 of the Ordinance must declare that "on the first Wednesday in September this Constitution shall be submitted," etc.

The PRESIDENT. Then no provision is anywhere made for a proclamation—neither in the Enabling Act nor by the Ordinance.

Mr. COLLINS. No, sir. Who would be the proper officer to issue the proclamation, the Governor of the Territory, or the President of the Convention?

The PRESIDENT. I think it should be the Governor of the Territory.

Mr. COLLINS. I will prepare an amendment in a moment.

Mr. BANKS. I move that the time for the recess be further extended, till half-past five o'clock.

The question was taken, and the motion was agreed to.

Mr. COLLINS. Now I move to amend Section 1, so as to read as follows:

"SECTION 1. The Governor of the Territory of Nevada is hereby authorized to issue his proclamation for the submission of this Constitution to the people of said Territory, for their approval or rejection, on the day provided for such submission by the Act of Congress, approved March 21st, 1864, and this Constitution shall be submitted," etc.

The rest of the section being as printed.

The PRESIDENT. No, no! You do not want to give the date of the Act of Congress; there has been an amendment made to that Act.

"At the time provided by Act of Congress" is sufficient.

Mr. COLLINS. Very well, I will leave that out.

The PRESIDENT. Now the Secretary will please read the entire section, as proposed to be amended.

The SECRETARY read as follows:

SECTION 1. The Governor of the Territory of Nevada is hereby authorized to issue his proclamation for the submission of this Constitution to the people of said Territory for their approval or rejection, on the day provided for such submission by Act of Congress, and this Constitution shall be submitted to the qualified electors of said Territory, in the several counties thereof, for their approval or rejection; said, further, on the first Tuesday after the first Monday of November, A. D. 1864, there shall be a general election in the several counties of said Territory for the election of State officers, Supreme and District Judges, members of the Legislature, Representative in Congress, and three Presidential electors.

The amendment was agreed to by unanimous consent.

No further amendment being offered—

The question was taken by yeas and nays on the final passage of the ordinance, as read and amended, and the vote was—yeas, 20; nays, none—as follows:

Yeas—Messrs. Banks, Belden, Brosnan, Chapin, Collins, Crawford, Crosman, Frisell, Folsom, Hawley, Kennedy, Kinkead, Lockwood, Mason, McClinton, Murdock, Tagliabue, Warwick, Wetherill, and Mr. President—20.

Nays—None.

So the Ordinance was passed.

Mr. KENNEDY. I suppose it will go at once to the Enrolling Committee.

The PRESIDENT. It will be referred to the Committee on Phraseology.

On motion of Mr. BANKS, at fifteen minutes after five o'clock, the Convention took a recess until seven o'clock, P. M.

—

EVENING SESSION.

The Convention reassembled at seven o'clock, P. M., and was called to order by the President.

The roll was called, and the following members responded to their names: Messrs. Banks, Belden, Brosnan, Chapin, Collins, Crosman, Folsom, Gibson, Hawley, Kennedy, Kinkead, Mason, McClinton, Proctor, Tagliabue, Wetherill, and Mr. President. Present, 17; absent, 22.

CALL OF THE HOUSE.

On motion of Mr. KENNEDY, no quorum being in attendance, a call of the house was ordered.

The roll call, just taken as above, was by unanimous consent adopted as the roll to be used under the call of the house.

The Sergeant-at-Arms was directed to arrest and bring in the absentees.

Messrs. Frisell, Crawford, Murdock, and Nourse appeared, severally stated their excuses, and were allowed to take their seats.

On motion of Mr. PROCTOR, a quorum being present, further proceedings under the call were dispensed with.

DAY OF ELECTION ON THE CONSTITUTION.

Mr. PROCTOR. I desire to report to the Convention that, as a committee of one, in accordance with the resolution adopted this afternoon, I waited upon the Governor, and requested him to telegraph to the authorities at Washington for information relative to the day prescribed by Congress for submitting the Constitution to the people; that the Governor has telegraphed to Washington asking for the information we seek, and also to the *San Francisco Bulletin*, the paper which officially publishes the Acts of Congress, in San Francisco, and that he expects an answer from the *Bulletin* to-night, and from Washington perhaps to-morrow. As soon as he receives an answer he will communicate it to the Convention.

The report was accepted, and the committee discharged.

THE SCHEDULE.

Mr. HAWLEY. I wish to state to the Convention that so far as my information extends—and I made inquires a few moments ago—the article entitled Schedule has not yet been delivered to the Enrolling Clerk, nor to any of his assistants. That should be attended to if it is expected to be enrolled to-night.

The PRESIDENT. I understand that both the Ordinance and Schedule have been passed, and submitted to the Committee on Phraseology.

COUNTY OF ROOP.

Mr. BROSNAN. Mr. President, there is an omission in the Schedule, or rather I should say it needs a further addition, and with the general consent of the Convention, I will submit the following as a separate section to be added to the Schedule:

SEC. —. The County of Roop shall be attached to the County of Washoe for judicial, legislative, and revenue purposes, until otherwise provided by law.

Mr. TAGLIABUE. Should it not also be attached to Washoe for county purposes? It seems to me there should be some county jurisdiction extended over that county.

Mr. BROSNAN. I will accept the amendment suggested.

The PRESIDENT. The Secretary will insert "county" before the word "purposes," and if there be no objection the rules will be deemed to have been suspended for the consideration of the section, so that it may be read a third time now.

The SECRETARY. With the consent of the Convention, I will put it in the form of a resolution, which will simplify the minutes.

The gentleman from Storey (Mr. Brosnan) offers the following resolution:

Resolved, That the following new section, to be numbered 22, be added to the article entitled Schedule:

Sec. 23. The county of Ormy shall be attached to the county of Washoe, for judicial, legislative, revenue and county purposes, until otherwise provided by law.

Mr. HAWLEY. I suggest that the vote should be taken on the passage of the section, by yeas and nays, to obviate any objection which might be raised hereafter.

The PRESIDENT. If it is contained in the enrolled copy of the Constitution, signed by the members, that will be sufficient. Is it the desire of the Convention that the vote shall be taken by yeas and nays?

SEVERAL MEMBERS. No, no!

The resolution was adopted by unanimous consent.

DECLARATION OF RIGHTS—CRIMINAL JURISDICTION.

Mr. BROSNAN. There is a matter of some moment in Article I, the Declaration of Rights, which attracted my attention, and of which I had made a note on my copy of the old Constitution, but I somehow overlooked it while we were proceeding through that article, in the regular course. I wish gentlemen who have copies would look at Section 8 of Article I. The defect I wish to remedy is this: We have specified in the Constitution that Justices of the Peace and Recorders of cities shall have such criminal jurisdiction as the Legislature may confer. That will be, of course, jurisdiction over offenses of a small grade, as misdemeanors, breaches of the peace, breaches of city ordinances, threats against the person, and perhaps other classes of cases which might be enumerated, of similar magnitude. But in this section it is declared that no person shall be held to answer for a capital, or otherwise infamous crime, without the intervention of a Grand Jury, by presentment or indictment. That would seem to include almost every conceivable criminal case, and in order that there may be no conflict between that section and that in which the Legislature is authorized to give certain criminal jurisdiction to Justices of the Peace, I consider it necessary to strike out the words "in cases of petit larceny," in the sixth line, so as not to confine it to such cases alone, and insert instead the words, "and also of all cases cognizable by Justices of the Peace and City Recorders." I will move to amend the section by striking out the words "of petit larceny," and supplying their places with the words "cognizable by Justices of the Peace and City Recorders."

Mr. NOURSE. I second the amendment.

Mr. BANKS. That amendment, I understand, has reference to Municipal Courts to be established by the Legislature.

Mr. BROSNAN. I will read the first part of the section, as it will then stand:

"Sec. 8. No person shall be held to answer for capital or otherwise infamous crime, (except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases cognizable by Justices of the Peace and City Recorders, under the regulation of the Legislature,) except on presentment or indictment of a Grand Jury," etc.

Mr. HAWLEY. I would inquire if the gentleman from Storey has considered the effect this amendment will have upon the enrollment. I merely suggest that if these amendments are made, it will be necessary to enroll the article again.

The PRESIDENT. It is contemplated to have a re-enrollment of the entire instrument. That was found to be necessary in the last Convention. If this amendment be made as proposed, it can be incorporated then.

Mr. NOURSE. I seconded the amendment, because at the first glance I thought it necessary, but upon looking the section over I am not sure about it. I would like to call the attention of the gentleman from Storey (Mr. Brosnan) to the language of the section. It says "capital or otherwise infamous crime." That does not extend to cases of assault and battery, or breaches of city ordinances. Now, if you make an exception in regard to cases cognizable by Justices of the Peace, and leave the power with the Legislature to prescribe the jurisdiction of Justices of the Peace, do you not thereby leave it in the power of the Legislature to run up the jurisdiction of Justices of the Peace, so as to include any crime they may choose? Petit larceny is not, technically speaking, an "infamous" crime.

Mr. BROSNAN. If the gentleman will give way for a moment, by leave of the Convention, I will withdraw the amendment I have proposed, and instead of that I will move to amend the section by striking out in the first line the words "held to answer," and substituting the word "tried," so as to read "no person shall be tried for capital or otherwise infamous crime," etc.

Mr. COLLINS. I would inquire if this amendment is strictly in order.

The PRESIDENT. It is competent for the Convention to take such action, under a suspension of the rules, which I understand has already been acquiesced in, there having been no objection. Any discrepancies or errors which may be observed, from time to time, can be corrected in that manner; but no amendment can be entertained, at this stage of proceedings, except by unanimous consent. That will be the interpretation of the rules by the Chair; and hence, if a single objection be interposed, the consideration of the amendment will be deemed not in order. The Chair will hold that a single objection will defeat any proposed amendment to an article which has already passed to enrollment. The question is upon the amendment last proposed by the gentleman from Storey, (Mr. Brosnan.)

The SECRETARY. I have placed the amendment in the form of a resolution, as follows:

Resolved, That Section 8 of Article I, entitled Declaration of Rights, be and the same is hereby amended, by striking out the words "held to answer," and in-

striking in lieu thereof the word "tried;" also by inserting after the word "for," the word "a," so as to read as follows:

"Sec. 8. No person shall be tried for a capital or otherwise infamous crime, (except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulations of the Legislature,) except on presentment or indictment of a Grand Jury," etc.

The amendment was agreed to by unanimous consent.

The PRESIDENT. I wish to call the attention of the gentleman from Storey (Mr. Brosnan) to another matter, namely, the provision of the Constitution which prohibits all judicial officers, except Justices of the Peace, from receiving to their own use, fees of office. I recollect making a suggestion to some member, that such a provision would exclude City Recorders.

Mr. BROSNAN. An amendment has been adopted excepting City Recorders, also.

PUBLICATION OF THE CONSTITUTION.

Mr. McCLINTON. I have not yet heard a word said in relation to having any official printing done for this Convention. It appears to me that it is very important to provide for the official publication of the Constitution, and I would like to inquire whether or not it is intended to have it officially published.

The PRESIDENT. That has been a subject of conversation among members, but I have not yet learned what action is proposed. I certainly conceive it to be very important that some measure should be adopted to provide for the printing of the Constitution immediately after its completion, so that the people may be advised of its provisions as early as possible.

Mr. CHAPIN. I have been waiting some time to see if anybody would submit a proposition on that subject, and I find that some members appear to think that no action is necessary, as the newspapers will publish the Constitution merely as a matter of news. I think myself it should be published officially, and as no one else has seen fit to offer a resolution, I will read one which I have prepared:

Resolved, That a committee of three be appointed to procure the printing of ten thousand copies of the Constitution on sheets, to be distributed to ——— different journals for publication as supplements, excepting one hundred or one hundred and fifty copies for each county, which shall be sent to the County Clerks for distribution by them; the cost of publication to be definitely agreed upon by said committee, and the bill audited by them for the printing.

Mr. WARWICK. As there are only nine counties, it will take but a few hundred copies to supply them, in the proportion proposed by the resolution. If ten thousand are to be printed, I think we might as well send three or four hundred, at least, to each County Clerk.

Mr. GIBSON. The idea is to distribute all except from fifty to a hundred copies for each county, through the newspapers, and to send those to the clerks. Last year we had five thousand printed, and they were all distributed but a few, in cases where the delegates would not take them home. The Representatives from Lander and Humboldt, I believe, did not take their proportion, and that is the way we happened to have them for use in this Convention.

Mr. HAWLEY. Does the resolution contemplate that the proprietors of the newspapers shall distribute one copy of the Constitution to each subscriber, with his newspaper?

Mr. CHAPIN. That is the idea. I tried to study economy as much as possible in drawing the resolution, because I really fear that there may be a difficulty in finding a publishing office which will be willing to take the job, and wait for the pay. My intention was to procure the printing of all the copies at one office, and then distribute them to the various newspapers, to the *Washoe Star*, the *Carson Independent*, the *Esmeralda Daily Union*, and so on, requesting the editors of those newspapers to distribute them to their subscribers, which I presume they would cheerfully do. But in order that every man may know where to get a copy, I proposed to send a few to each County Clerk, so that one who does not take a newspaper, if he wants a copy of the Constitution, can send to the County Clerk's office and get it.

Mr. FRIZELL. When you have the Constitution once in type, the additional cost of a few thousand copies more than the first order, is very little—almost nothing. I think, therefore, we had better have a liberal number printed.

Mr. CHAPIN. I think ten thousand is plenty. In fact, I hesitated about putting the number as high as that.

Mr. McCLINTON. I am not certain about the propriety of sending any at all to the County Clerks. The County Clerk's office is a place where the citizens generally are not very liable to resort. Suppose we send two hundred and fifty copies to the County Clerk of Esmeralda County, or Storey County; they will never be distributed, because people generally very seldom go into the County Clerk's office, unless on special business. They do not go there perhaps more than once a year, while they go to other places a hundred or possibly two hundred times. The post office, or the express office, would be a much better place to send the documents to. But I think we had better leave the distribution entirely to the newspapers.

Mr. CHAPIN. Well, I will agree to that, and will strike out all in relation to the clerks.

Mr. NOURSE. Perhaps it would be as well to let the committee manage it.

The PRESIDENT. I think the committee should arrange the matter of distribution. We can give authority to procure the printing and to distribute the copies, and then leave the committee to determine the mode of distribution.

Mr. CHAPIN. I have no objection.

Mr. BANKS. I will move to amend the resolution, so as to leave the whole matter in the hands of the committee. And here I will suggest what has not perhaps occurred to some of the members; that is, that the County Clerks, of all men in the State, would naturally be the worst to entrust with this matter, for it will be remembered that the Constitution we have framed has taken away the fees for much of the business which they have heretofore been paid for in that manner. A good many of them will be candidates for re-election, or likely to hold on to the office, and I think we had better leave as little to them as possible. I am inclined to think, that if we send them copies of the Constitution, they will devote a large share of them to purposes other than that for which they are intended.

Mr. KENNEDY. I think it would be a good idea to send the copies to the delegates for distribution, instead of sending them to the County Clerks. But it seems to me we had better leave it to the committee altogether. I do not believe many newspapers will be likely to publish the Constitution in full, unless they expect to be paid for it.

Mr. CHAPIN. The publishers will merely have to send out the copies, which they receive ready printed.

Mr. McCLINTON. The printer can strike off one thousand, two thousand, or whatever number is required, with the heading "*Virginia City Daily Union*—Supplement;" then another batch, headed "*Esmeralda Daily Union*—Supplement," and so on, for all the newspapers in the Territory. Those copies can be sent to the publishers of the respective journals, with the request that they distribute them. If the committee do not see fit to send them all to the newspapers, a thousand copies, or as many as they please, may be reserved, to be distributed in such manner as may be deemed advisable. I think we had better leave the whole matter with the committee.

Mr. CHAPIN. We might let the resolution read in this wise:

Resolved, That a committee of three be appointed to negotiate for the publication and distribution of ten thousand copies of the Constitution, on sheets, to be distributed with the different journals as supplements, or otherwise, as the committee may deem expedient.

Mr. BANKS. I would greatly prefer to leave out all about the supplements, and say only "to be distributed as they deem best."

Mr. CROSMAN. It is probably as well to leave it all to the committee, but at the same time I am of the opinion that the best way to distribute the copies of the Constitution, is to send them to the delegates in this Convention. There is no means which will be found so ready and effectual for reaching the masses of the voters, as to give them to the delegates from the several counties, for distribution.

Mr. CHAPIN. I will withdraw the first resolution, by leave of the Convention, and will offer another in the place of it, which I ask the Secretary to read.

The SECRETARY read, as follows:

Resolved, That a committee of three members of the Convention be appointed by the President of the Convention, which committee shall be authorized to have published ten thousand copies of the Constitution; and that they be further authorized to make proper distribution of the same among the people of the different counties of the Territory, in the Territories, and that the expenses of such publication and distribution be certified by such committee to the next session of the State or Territorial Legislature, as may be, for payment.

Mr. TAGLIABUE. That is all very well, but I think the gentleman from Storey (Mr. Chapin) has shut the wind off by this amendment of his, which we have adopted heretofore as a part of one section of the Schedule:

"Nor shall any appropriations be made out of the revenue arising from said tax, except in the following manner, to wit:

First—For paying interest upon the public debt.

Second—For salaries of State officers.

Third—For State Prison expenses.

Fourth—For Educational purposes.

Fifth—For Legislative and Miscellaneous expenses."

Fifth comes the Legislature, and last of all miscellaneous expenses. It appears to me that last item is not likely to be reached during the next three years, and I am certain that these printing bills of the newspapers could not be disposed of, by the newspaper publishers, at any price.

Mr. CHAPIN. I beg leave to correct the impression which many gentlemen seem to have on that subject. Because these miscellaneous expenses are placed last, they seem to be entirely despondent and hopeless. But if the Legislature will have wisdom enough to sit down and count the cost, and look out for all the details of their appropriations from the beginning, why will they not have wisdom enough also to look out for their own pay at the end? And if they do that they must necessarily provide for these miscellaneous and contingent expenses at the same time, because, as a matter of necessity, those expenditures are incurred before the pay of the Legislature is due. I have no fear but that those little bills will be properly provided for, and as promptly as any others which will come before the Legislature.

Mr. TAGLIABUE. But this year they have only the proceeds of a thirty cent tax, and if they derive no revenue from the tax on the gross proceeds of the mines, they will certainly be apt to use up the whole in drawing their pay and mileage, before reaching these smaller accounts.

The PRESIDENT. I suggest that the newspapers possibly may not find out that fact until after they have published the Constitution. [Merriment.]

Mr. TAGLIABUE. But we do not want to take advantage of them. I am glad the Legislature comes in ahead of "miscellaneous," because if they came in at the foot the members would not get a cent for three years.

The question was taken on the resolution last offered by Mr. Chapin, and it was adopted.

The PRESIDENT. I will name as the Committee on Publication, Messrs. Chapin, McClinton, and Crawford.

Mr. McCLINTON. I beg leave to decline, for this reason: I think it necessary that the members of the committee should be near each other, where they may consult together personally, and as I expect to go home at the earliest possible moment, and probably shall not be here again for a long time, perhaps never, I do not think it is possible for me to aid the committee in any manner whatever.

The PRESIDENT. If there is no objection, the gentleman will be excused.

Mr. CRAWFORD. I should rather be excused from serving on that committee, as the job is a very fat one, and being on the committee would deprive me of the privilege of competing for it. [Merriment.] I think the contract will possibly be made with some of the Virginia City presses, and it will be far more convenient to have the committee located there.

The PRESIDENT. If there is no objection, the gentleman from Ormsby will also be excused.

Mr. McCLINTON. Probably the work can be done cheaper at Virginia City than at any other place in the Territory, and if the gentleman from Ormsby (Mr. Crawford) does not want to put in a bid for the job, I suggest that the committee should be taken from the Storey County delegation entirely.

The PRESIDENT. The committee will consist of Messrs. Chapin, Collins, and Frisell.

Mr. COLLINS. I would prefer to have some other gentleman named in my place on the committee.

The PRESIDENT. I see the force of the suggestion made by the gentleman from Esmeralda, (Mr. McClinton,) and therefore have appointed the committee entirely from the Storey delegation.

Mr. BROSNAN. I would like to be informed more fully as to the duties of the Committee on Re-enrollment, and of whom that committee consits.

The SECRETARY. Messrs. Brosnan, Kinkead, and Gibson were appointed as such committee.

Mr. KINKEAD. Is it the intention of the Convention, as a Convention, to take any further action on the various articles, before they are disposed of entirely?

The PRESIDENT. I take it that we do not propose to adjourn finally to-night, and we may be able to give the instrument a final revision.

DECLARATION OF RIGHTS—SLANDER AND LIBEL.

Mr. BROSNAN. I am satisfied as to that. Now there is another matter which I should like to bring to the attention of the Convention before its labors are finally closed. Mr. President, besides what feeble aid I could give in the construction of this instrument, I have attentively devoted to it all the consideration I could command, and I am satisfied with it, in almost every particular, as it stands, as the best I could do to carry out my own views, and to discharge faithfully my duty to my constituents. I must say, however, that there is one matter contained in the instrument, as it now stands, which I would rather see corrected. We have embodied in this Constitution, I will not say an unwise provision, but on the contrary I think it is, if not wise, at least entirely becoming the progressive spirit of the age. I refer to that section which disqualifies a citizen from preferment, and from the exercise of the right of suffrage, in consequence of his having been engaged in a duel. I have no fault to find, at the present time, Mr. President, with the embodiment of that provision in the Constitution, for whatever may be my own feelings on the subject, I would be willing to defer to the better judgment and the moral sensibilities of my fellow citizens, rather than to set up my own private judgment or opinion against them.

But in embodying that feature in our Constitution, it seems to me that we have left unguarded against, another crying evil in our midst. We have, so to speak, exonerated men from any kind of punishment, when they violate the civil rights of others, and have left no redress for the party who is thereby injured, except in a few cases, perhaps, for in most cases they can only resort to a fruitless and empty attempt to recover redress in a court of law, a thing which I would consider more *brutum fulmen*—a void, useless, and altogether incommensurate mode of relief. We are now in a position, or we shall be as a State, under the Constitution as it now reads, where the reckless and malevolent may permeate every avenue of society, circulating vile falsehoods and base accusations against their neighbors, with impunity, smiting down perhaps the best citizens, in the days of their usefulness, by the villainous shafts of slander, or the empoisoned arrows of the pen. The man of malevolent heart may squat toad-like at the ear of his neighbor, as the devil did in the garden at the ear of Eve, infusing the poison of his own malicious heart, by uttering falsehood and scandal against that neighbor's friend, and yet for him who is maligned there is no redress. If he goes into the courts of justice to seek for redress of his wrongs, he will most often find that the person who has slandered him, the man who delights in striking down the good name of his fellow citizen, is irresponsible—entirely unable to answer in the way of compensating damages. Thus, if you pursue the peaceable course of resorting to the law, in seeking redress for injuries done to you of such character, while you may obtain a judgment, through the verdict of twelve of your fellow citizens, as a solace for your injuries and wrongs, yet the penniless, characterless, ruthless, merciless ruffian who has thus smitten your reputation and honor,

not having the wherewith to respond in compensating damages, goes forth free, and laughs with impunity not only at the wrongs he has perpetrated against his neighbor, but also at the pretensions of the law.

We have embodied here in our Constitution a declaration that there shall be no imprisonment for debt, except in cases of fraud, and we have allowed the slanderer to go free, and the libeller to sneer at the shafts of justice. I hold, Mr. President, that it is a greater offence, and should be so regarded, not only against the moral and divine law, but also against the laws of human society, to slander and to libel another than it is to defraud him. The injury inflicted by fraud is less, even taking into consideration that lower point of view. And, yet, for the lesser offence you imprison a man, while for the greater you have provided no remedy, no possible redress. Why, sir, how much more contempt is the offence of a libel or slander than that of a fraud! The fraud is commonly circumscribed in its limits and effects. It may be known in the immediate neighborhood where the parties concerned are living, but the injury affects only the purse, and the injured man is none the less respected by his fellows; whilst the slander or libel travels far and wide, speeds with the rapidity of lightning, fleet as the wind, and spreading as it goes, like rumor, magnifying itself. It rolls onward as would a magnificent globe of fire, gathering up in its course particles of corpuscular matter, until the original apparition grows into a monster which fatally poisons the very atmosphere, not of a single community alone, but of extended communities which bear its utterance. You look on and see this monster fastening its vulture-like talons in the heart of its victims, whilst the man, if he will respect the law, dare not use the weapons which the Almighty has given him for self-defence. You allow the vulture of slander to prey upon his vitals, as did that other foul bird upon the liver of the chained Prometheus. In my judgment this is wholly unfair and wrong. If we mean to be just in this matter, and mean to carry out, in letter and spirit, the provision of that other section which we have embodied in our Constitution, to prevent the practice of dueling, then let us at least place the slanderer and the libeller upon the same platform with the defrauder, the cheat, and the swindler. In my estimation the slanderer and libeller are at least as reputable as these.

I therefore move, as the last effort I shall make,—and I think this is the last time I shall desire to detain the Convention,—that Section 16, of Article I, be amended by inserting after the word "fraud" the words "libel or slander," so that the clause will read:

"And there shall be no imprisonment for debt, except in cases of fraud, libel, or slander."

Mr. NOURSE. I second the amendment.

Mr. CHAPIN. So do I.

Mr. WARWICK. Now, sir, heartily as I endorse the action taken by the Convention on the subject of dueling, I confess that I do heartily endorse the action made by the gentleman from Surry, (Mr. BRANCH.) It never was my desire to throw a shield of protection over the slanderer, or to deprive the slandered of the right to protect himself by every means of protection which the law may justify. There are men in this community, more especially at this time, who must feel that the shafts of slander, of which the gentleman has spoken, ought to be placed within the reach and control of the law. A man's character is dearer than his goods, dearer far than life to many men, for they are ready to sacrifice life itself rather than honor. I therefore hold that it is the duty of this Convention—and I honor the gentleman from Surry for making this last effort—to throw the shelter of the law, as is proposed by this amendment, over those who, without it, would have no protection whatever.

It cannot be the intention of this Convention, sir, nor of any other body of sensible men, to throw a shield around those pests of society who would shelter themselves like cowards behind the enactment we have made against dueling, and from that covert send forth their envenomed shafts against the character of better men. I repeat that I honor the gentleman from Surry, and shall ever remember him with honor, for the course he has taken on this subject, and I only regret that it has escaped the notice of members so long. Now that we have deprived men of the right to protect themselves, let us at least give them some shelter and protection by law, against the envenomed shafts of slander.

Mr. BANKS. I like this amendment, chiefly because it places slander and libel in their proper places in the category of crimes, associating them with fraud and swindling; but I do not understand that the Constitution, as it now stands, would prohibit the Legislature from passing a law to imprison a man directly, as a punishment for slander.

Mr. BROGNAN. There could be no such thing in a case of slander. Libel is an indictable offence, but for slander the only remedy would be an action for damages.

Mr. NOURSE. It is much harder to convict a man of such an offence on a criminal charge than in a civil action.

Mr. BANKS. I made the remark rather by the way of an inquiry, in reference to the power of the Legislature to punish those crimes, outside of the constitutional provision.

The SECRETARY. I have placed the amendment in the form of a resolution, as follows:

Resolved, That Section 16 of Article I, entitled Declaration of Rights, be amended by inserting after the word "fraud," the words "libel or slander," so that such clause will read: "And there shall be no imprisonment for debt, except in cases of fraud, libel, or slander."

The question was taken, and the resolution was unanimously adopted.

Mr. HAWLEY. I move that the Convention now adjourn.

Mr. CHAPIN. I hope we shall go into a final examination of the enrolled articles, and at least begin that work to-night. We can get the articles at once, if they are not here now. I will move that we take up the enrolled copy of the Constitution for final examination.

Mr. KENNEDY. I would like to inquire if it is necessary to go over the entire Constitution again, and have it all read? I do not see that it is necessary.

Mr. BANKS. Certainly.

The PRESIDENT. The question is first on the motion of the gentleman from Douglas, (Mr. Hawley,) to adjourn.

Mr. CHAPIN. I warn gentlemen that if we do adjourn now, we shall not be able to get through to-morrow.

The PRESIDENT. Discussion is not in order.

Mr. CHAPIN. I ask for the yeas and nays.

The question was taken by yeas and nays on the motion to adjourn, and the vote was—yeas, 11; nays, 9—as follows:

Yeas—Messrs. Belden, Bowman, Collins, Crawford, Frisall, Folsom, Gibson, Hawley, McClinton, Rourke, and Warwick—11.

Nays—Messrs. Banks, Chapin, Crosman, Kennedy, Parker, Proctor, Tagliabue, Wetherill, and Mr. President—9.

So the motion was agreed to.

Accordingly, at 9 o'clock, P. M., the Convention adjourned.

TWENTY-FIRST DAY.

CARSON, July 27, 1864.

The Convention met at nine o'clock, A. M., and was called to order by the President.

The roll was called, and the following members responded to their names: Messrs. Banks, Belden, Bowman, Chapin, Collins, Crawford, Crosman, Folsom, Hawley, Hudson, Kennedy, Kinkead, Mason, McClinton, Murdock, Proctor, Warwick, Wetherill, and Mr. President. Present, 19; absent, 30.

No quorum being present, a call of the house was ordered, by general consent, but before the roll was called Messrs. Gibson and Tagliabue came in, making a quorum, and thereupon further proceedings under the call were dispensed with.

Prayer was offered by the Rev. Mr. RILEY.

The journal of yesterday was read, and approved.

THE ENROLLMENT.

Mr. HAWLEY. I ask leave to make a statement in regard to the enrollment. It is hardly necessary, perhaps, but for the information of the Convention I will state that the condition of affairs is just this: The Judicial Article, and the Article on Amendments, are in the hands of Mr. Van Winkle, the Enrolling Clerk, who assures me that they will be done by this evening, so that we can finish up to-night. The article entitled Schedule has been placed in the hands of one of the clerks of the Secretary of the Territory, who has given a portion to another clerk, and they will have that article completed also in good season. I notified two of the members of the Committee on Enrollment to meet me here this morning, for the purpose of comparing the enrolled articles, but I am sorry to say that they were not here in time. One of them came in at a quarter before nine o'clock, too late to commence reading, and the other was detained till after the roll call. At the proper time I propose to make a motion, though it may be a little irregular, that the Convention resolve itself informally into the enrolling committee, then let the Secretary read the engrossed articles, and we can compare them as read with the enrolled articles.

The PRESIDENT. That motion can be entertained after the regular order of business.

The regular order of business, as prescribed by the rules, was called through, but no business arose thereunder.

FINAL REVISION.

Mr. HAWLEY. I will suggest that we now proceed with the final reading and revision of the Constitution as enrolled. We can then compare the enrolled articles as they are read, with the orignal and engrossed copies.

The PRESIDENT. If there is no objection that course will be pursued. The Chair will suggest to members of the Convention that this is to be the final reading of the Constitution, and it is highly important that every one should give his undivided attention, so that if any errors exist they may be corrected at once. The Secretary will proceed.

ADOPTION OF UNITED STATES CONSTITUTION.

The SECRETARY first read the preamble and resolution, adopting the Constitution of the United States, on behalf of the people of Nevada, as follows:

WHEREAS, The Act of Congress, approved March 21st, 1864, "To enable the people of the Territory of Nevada to form a Constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," requires that the members of the Convention for framing said Constitution shall, after organization, on behalf of the people of said Territory, adopt the Constitution of the United States; therefore, be it

Resolved, That the members of this Convention, elected by the authority of the aforesaid Enabling Act of Congress, assembled in Carson City, the Capital of said Territory of Nevada, and immediately subsequent to its organization, do adopt, on behalf of the people of said Territory, the Constitution of the United States.

No correction or amendment was proposed.

ORDINANCE PROHIBITING SLAVERY, ETC.

The SECRETARY next read the Ordinance relative to slavery, religious toleration, and the public lands, as follows:

ORDINANCE.

In obedience to the requirements of an Act of the Congress of the United States, approved March twenty-

first, A. D. 1864, to enable the people of Nevada to form a Constitution and State government, this Convention elected and convened in obedience to said Enabling Act, do ordain as follows, and this ordinance shall be irrevocable, without the consent of the United States and the people of the State of Nevada:

First, That there shall be, in this State, (the said State of Nevada,) neither slavery nor involuntary servitude, otherwise than in the punishment for crime, whereof the party shall have been duly convicted.

Second, That perfect toleration of religious sentiment shall be secured, and no inhabitant of said State shall ever be molested in person or property, on account of his or her mode of religious worship.

Third, That the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that the lands belonging to citizens of the United States, residing without the said State, shall never be taxed higher than the land belonging to residents thereof; and that no taxes shall be imposed by said State, on lands or property therein, belonging to, or which may hereafter be purchased by the United States.

Mr. HAWLEY. Has not the word "Territory" been left out of that preamble? It says "To enable the people of Nevada." I think it should read "To enable the people of Nevada Territory."

Mr. COLLINS. I think it was so written, in the original.

The PRESIDENT. It is certainly a very proper amendment, and it can be made by unanimous consent.

Mr. HAWLEY. I will move to insert after "Nevada" the word "Territory."

The PRESIDENT. If there is no objection the amendment will be considered as adopted.

Mr. BANKS. The language, as it now reads, is the same as in the title of the Enabling Act, as gentlemen will find by comparing the two. The title of the Enabling Act reads thus: "An Act to enable the people of Nevada to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States." I think the wording is correct now.

The PRESIDENT. My impression is, that the gentleman from Humboldt (Mr. Banks) is correct. Necessarily the Ordinance follows the language of the Enabling Act.

Mr. HAWLEY. I withdraw the amendment.

Mr. WARWICK. Is that parenthesis necessary in the first paragraph following the preamble? Would it not read better and plainer to say, "There shall be in the State of Nevada neither slavery nor involuntary servitude," etc.?

Mr. BANKS. The words "in this State," seem to be superfluous. It should read, "there shall be in the said State of Nevada."

Mr. FRISELL. I think you will find that the same language has been used in every State where slavery has been prohibited.

Mr. WARWICK. Those words, "the said State of Nevada," seem to have been thrown in as a parenthesis, and are altogether unnecessary.

Mr. BROSNAN. I certainly think they are not necessary.

Mr. WARWICK. I move that those words be stricken out, including the parenthesis.

Mr. COLLINS. Those words were not in the original; they have been incorporated by the engrossing clerk. I second the motion to strike out, because the words were never placed there by the Convention.

The SECRETARY. They were inserted by a motion to amend, I think.

The question was taken on the amendment offered by Mr. Warwick, and Messrs. Banks and Tagliabue voted no.

Mr. BANKS. I withdraw my objection out of deference to the majority.

Mr. TAGLIABUE. I would have no objection, but we must copy the Enabling Act.

Mr. WARWICK. Allow me to suggest that this is not copied from the Enabling Act. We desire to strike out the words "the said State of Nevada," simply because they are entirely superfluous.

Mr. TAGLIABUE. I withdraw my objection.

Mr. BANKS. I am very well satisfied that those words were read in the original, when the ordinance was first introduced, whether they were contained in the original copy or not. I presume that it was so written, for I remember distinctly that it was read—"There shall be in the said State of Nevada," and that appears to me the better reading. I do not wish to make any change unless it is obviously necessary, but if we are going to change the language at all, let us make the language exactly correct. I propose, therefore, that we retain the word "said," and let it read: "There shall be in the said State of Nevada."

The PRESIDENT. I think "this State" would read better than "the said State of Nevada."

Mr. BANKS. I shall take it upon myself, whenever I consider that a proposed change is wrong, to vote against it, yet in this case I do not know that it is material.

The SECRETARY. I have the original copy, as introduced by the gentleman from Storey, (Mr. Collins.) It reads, as engrossed—"There shall be in this State, the said State of Nevada."

Mr. BANKS. The Committee on Phraseology did not strike out that language, though that committee had full knowledge of its existence.

Mr. TAGLIABUE. The Committee on Phraseology still think it is right.

The question was again taken on the amendment offered by Mr. Warwick, and it was agreed to by unanimous consent.

DECLARATION OF RIGHTS.

The Convention next took up the Preamble, and Article I, entitled Declaration of Rights.

The SECRETARY read the Preamble, and Sections 1 and 2 of Article I, as follows:

PREAMBLE.

We, the people of the State of Nevada, grateful to

Almighty God for our freedom, in order to secure its blessings, insure domestic tranquility, and form a more perfect Government, do establish this Constitution.

ARTICLE 1.

DECLARATION OF RIGHTS.

SECTION 1. All men are by nature free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property; and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. But the paramount allegiance of every citizen is due to the Federal Government, in the exercise of all its Constitutional powers, as the same have been or may be defined by the Federal Judiciary; and no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith, or perform any act tending to impair, subvert, or resist the supreme authority of the Government of the United States. The Constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whensoever any portion of the States, or people thereof, attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by warrant of the Constitution, employ armed force in compelling obedience to its authority.

The PRESIDENT. My recollection is that an amendment has been adopted in Section 2 which does not appear in the copy before us. On motion of the gentleman from Storey (Mr. Brosnan), I think, the words "benefit of the people," in the first clause, were stricken out, and other words adopted.

Mr. BROSNAN. I recollect of sending up an amendment of that character, but whether it was adopted or not I cannot say.

Mr. CHAPIN. I think it was not changed. I have no memorandum of it.

The PRESIDENT. Very well; the Secretary will proceed with the reading.

Mr. BANKS. There is one term made use of in the section last read, to which I have always been very much opposed, and which I would like to have changed at this time. I refer to the phrase "as the same have been or may be defined by the Federal Judiciary." It seems to me it would be much better to say "the Supreme Court of the United States." That would be more direct, and plainer, and we know very well that the judiciary, and the courts, are not necessarily the same in all cases, for sometimes an act may be a judicial act without being the act of a court. I do not know that it would make any material difference in point of fact, but I nevertheless much prefer to use the direct term, "the Supreme Court;" and therefore, I move to make that change in Section 2, striking out the words "Federal Judiciary," and inserting instead the words "Supreme Court of the United States."

The PRESIDENT. The amendment proposed is certainly proper, because there are different United States Courts; for instance, the District and Circuit Courts, which are distinctive parts of the Federal Judiciary.

Mr. COLLINS. I think that change should be made.

Mr. LOCKWOOD. If my memory serves me correctly, the same change has once been proposed, and rejected.

Mr. BANKS. No, sir. I had offered an amendment to this section, and accepted the amendment to my amendment suggested by the gentleman from Storey (Mr. Fitch,) which embraced this term "Federal Judiciary," but it will be remembered that there was at that time some considerable feeling in regard to the doctrine or principle to be enunciated by the section, and especial attention was not called to the particular phraseology employed.

The PRESIDENT. My recollection coincides with that of the gentleman from Humboldt (Mr. Banks.) The words referred to were adopted by the Convention, as an amendment to the original section.

Mr. LOCKWOOD. I think the gentleman from Humboldt concurs with me entirely, so far. The change of the term was subsequently proposed; I think the motion came from me, although I am not altogether certain of that; at all events the change was proposed, and rejected.

Mr. BANKS. The history of the matter was this; I had proposed an amendment to change the original section, but my amendment did not embrace the full extent of the change which was finally made. Then the gentleman from Storey (Mr. Fitch) proposed his amendment, which covered more ground than mine, and although the terms of his amendment did not suit me altogether, yet as I approved generally of the object it had in view, and saw that it would meet with the approval of the majority, I accepted his amendment.

Mr. BROSNAN. My recollection is entirely in harmony with that of the gentleman from Humboldt. We had some conversation on the subject matter, in regard to which, at the time, a good deal of feeling was manifested, and it was my understanding that although the gentleman from Humboldt accepted the amendment offered by my colleague, (Mr. Fitch,) yet he did not prefer to use that particular language. I know that he did entertain and express the opinion, at the time, that the term "Federal Judiciary" was too indefinite, or at all events not the best term to use, perhaps, but in consequence, it may be, of the feeling existing relative to the general subject matter, an amendment was not proposed, though it was talked of.

The amendment proposed by Mr. Banks, was adopted by unanimous consent.

The SECRETARY read Sections 3 to 6, inclusive, as follows:

SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law; and in civil cases, if three-fourths of the jurors agree upon a verdict, it shall stand and have the same force and effect as a verdict by the whole jury; provided, the Legislature, by a law passed by a two-thirds vote of all the members elected to each branch thereof, may require a unanimous verdict, notwithstanding this provision.

Sec. 4. The free exercise and enjoyment of religious professions and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Sec. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Sec. 6. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

Mr. COLLINS. I move to amend Section 6 by striking out the word "nor," where it occurs before the word "unusual," and inserting the word "or" instead; so as to read: "nor shall cruel or unusual punishment be inflicted," etc.

The amendment was agreed to by unanimous consent.

Sections 7 and 8 were read, as follows:

Sec. 7. All persons shall be bailable by sufficient sureties; unless for capital offenses, when the proof is evident or the presumption great.

Sec. 8. No person shall be tried for a capital or otherwise infamous crime, (except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which the State may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the Legislature,) except on presentment or indictment of a Grand Jury; and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation having been first made or secured, except in cases of war, riot, fire, or grant public perils, in which case compensation shall be afterwards made.

Mr. HAWLEY. It says, in Section 8, that "the party accused shall be allowed to appear and defend in person and with counsel." I submit that under that language a person, however competent, might not be permitted to appear for himself, without the aid of counsel. I move to insert the word "or" instead of "and," so as to read—"in person or with counsel."

Mr. McCLINTON. I have no objection to the amendment, but I am satisfied that the use of the word "and" does not make it obligatory upon a man accused to employ counsel.

Mr. BROSNAN. Not at all.

Mr. BANKS. That is clear.

Mr. McCLINTON. "Or" would perhaps read better.

The PRESIDENT. Will the amendment attain the desired object? Would not the Legislature then be authorized to pass a law providing that, though a man might enter appearance by counsel, yet, when he so appeared, he could not appear and defend in person?

Mr. WARWICK. I object to that amendment.

The PRESIDENT. I think it is right as it is. It will not preclude a party from either defending in person, or calling in the assistance of counsel.

Mr. COLLINS. Of course it is not obligatory upon a man to employ counsel.

Mr. McCLINTON. I think the language is better as it is. I do not want to be prohibited from defending my own cause, if I have any, or employing such other counsel as I see fit. If I should ever be charged with a crime, which I trust I never shall be, I should certainly want that privilege.

Mr. BANKS. How is language which has the sanction of time, employed, I believe, in the Constitution of New York, or some of the older States,

"The parties in Justices' Courts may prosecute and defend in person, or by attorney."

There the disjunctive conjunction is used, and I think that is the language in all cases, in statutes, and no question has arisen upon it.

Mr. HAWLEY. I think my amendment covers it, and it is the usual statutory language. I will modify my amendment a little, and in order to test the sense of the Convention, will move that the words "or by," be substituted for the words "and with," so as to read: "in person or by counsel."

The PRESIDENT. "And with" is used in the Constitution of New York, and also in that of California. It is the same language, exactly: "The party accused shall be allowed to appear in person and with counsel."

Mr. BANKS. Well; let it go.

Mr. HAWLEY. I withdraw the amendment; let it go.

Sections 9 to 14, inclusive, were read as follows:

Sec. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted or exonerated.

Sec. 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

Sec. 11. The military shall be subordinate to the civil power. No standing army shall be maintained by this State in time of peace, and in time of war no appropriation for a standing army shall be for a longer time than two years.

Sec. 12. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner to be prescribed by law.

Sec. 13. Representation shall be apportioned according to population.

Sec. 14. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for payment of any debts or liabilities hereafter contracted; and there shall be no imprisonment for debt, except in cases of fraud, libel, or slander, and no person shall be imprisoned for a militia fine in time of peace.

Mr. McCLINTON. I can hardly see the con-

section, in the section last read, between libel or slander, and imprisonment for debt.

Mr. BROSNAN. Suppose you get a judgment in a suit brought for slander—is it not a debt? Does not your judgment constitute a debt?

Mr. McCLINTON. It may be so.

Sections 15, 16, and 17, were read as follows:

Sec. 15. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Sec. 16. Foreigners who are, or who may hereafter become, bona fide residents of this State, shall enjoy the same rights, in respect to the possession, enjoyment, and inheritance of property, as native-born citizens.

Sec. 17. Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.

Mr. KENNEDY. Would it not be better, in the section last read, to use the singular number, and say "crime," instead of "crimes?" Might not the plural form convey the idea that a man must commit more than one crime before he can be subjected to involuntary servitude?

Mr. BANKS. It is the language of the California Constitution; the word "crimes" is there used.

Mr. BROSNAN. I think "crime" would be an improvement.

Mr. KENNEDY. It seems to me it would read better in the singular number, but I do not know that it makes much difference.

Mr. WARWICK. I suggest that, inasmuch as it is no positive improvement in the language, no alteration should be made.

Mr. BROSNAN. My impression is, that "crime" is the better word to use there.

The PRESIDENT. It now reads in the exact words of the California Constitution, and if it has been the subject of judicial investigation in that State, by retaining the same language we have the advantage of adopting with it such interpretation as has been given to it in that State.

Mr. KENNEDY. I inquire if it has been the subject of judicial interpretation? I do not think the question ever arose.

Mr. WARWICK. Does the President think there is any impropriety in the language as it stands?

The PRESIDENT. I do not.

Mr. BROSNAN. It is well enough as it is.

Section 18 was read, as follows:

Sec. 18. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

Mr. KINKEAD. I suggest that that be amended so as to read: "particularly describing the place or places." There may be several places to be searched.

Mr. DeLONG. I second the amendment proposed by the gentleman from Ormsby.

Mr. WARWICK. I will object, for the sake of avoiding trouble. I think when a person describes the place to be searched, he will of course describe all the places suspected. The word "place," in that connection, stands for the plural as well as the singular. He must describe the place where the property is supposed to be, and if he does not know anything of its whereabouts, he must describe all the places where he thinks it is likely to be found.

Mr. LOCKWOOD. The words "persons," and "things," are in the plural, and I think "place" should be changed to the plural form also. I think it would be just as correct to say "person and thing to be seized," as "place to be searched."

The PRESIDENT. The same language occurs in the California Constitution.

Mr. WARWICK. We can then with great propriety adopt the same language. My objection is to amending the enrolled article, and I think it ought not to be done, in any case, unless the amendment is absolutely necessary. It seems to me very plain, that in describing the place to be searched, a man might mention one place in Carson, another in Virginia City, and so on.

Mr. LOCKWOOD. The article need not be re-enrolled in order to make the word plural; the letter *s* can be placed at the end of the word.

Mr. DeLONG. I think this language might be held to allow only one place to be searched on one complaint, and if I were on the bench, I should hesitate to grant a warrant for searching more than one place on one affidavit.

Mr. PARKER. You might describe the place to be searched by a general term, so that you could search all the places in one village.

Mr. DeLONG. But you would not want to search the whole city of Carson, for example, but only the premises of one man who might be suspected, and that man might have a house in Carson, and another in Washoe, or elsewhere. I think the amendment should be made, for, as it stands, if you search the house of the suspected person in Carson, you exhaust your right.

The PRESIDENT. I think the question could only arise in case of objection being made to the right of searching different places.

Mr. LOCKWOOD. The place might be "particularly described," and still include several localities. No difficulty has arisen in California, that I am aware of, under that language. I have no objection, however, to putting an *s* after the word "place."

Mr. BROSNAN. I should object to that, certainly.

Mr. McCLINTON. It should read, "place or places."

Mr. LOCKWOOD. Only one word further. I may be wrong, I know, as I frequently am, but it seems to me in that portion referring to persons, although we use the plural form, it would nevertheless clearly refer to one single person. This is our Declaration of Rights, and when we

assert any right for the mass of the people, such right inures to every single individual.

The PRESIDENT. In my judgment, the language is not susceptible of any misconstruction.

Mr. BROSNAN. An assault, or a fight may take place in a drinking saloon, for instance, and there may be several persons engaged in the fight. Then it is only necessary to describe one place, but it seems to me that we should say "person or persons." Each person must be described, whether there be one or more, though there may be but one place. I do not see any difficulty in reference to the word "place," for when anything is supposed to have been hidden away, if necessary several places may be described in one complaint; because it would be necessary to make search in each of the suspected places.

Mr. KINKEAD. I ask for the question on my motion to insert after "place," the words "or places."

The amendment was agreed to by unanimous consent.

The PRESIDENT. Now I submit whether, in conformity to this amendment, we should not also adopt the singular form preceding the words "persons," and "things." As we have changed the language of the Constitution of California in the one particular, I think we had better carry out the same idea throughout the entire provision.

Mr. LOCKWOOD. Then it will read: "person or persons, and thing or things."

Mr. BROSNAN. Yes, sir; that is just as necessary as the other amendment was.

Mr. LOCKWOOD. I think it is all unnecessary, and that was the reason I opposed the first amendment.

Mr. McCLINTON. I think we can obviate the objection to pluralizing the word "things," by using the term "property." That would cover everything to be seized. Then it would read: "describing the place or places to be searched, and the person or persons and property to be seized." It appears to me that we ought to make that change in order to carry out the idea of the amendment just adopted.

The PRESIDENT. That might occasion discussions as to what shall be deemed property, such as arose in our Convention when the article on Taxation was under consideration.

Mr. DeLONG. There is no danger in regard to describing a mining claim under that provision.

Mr. McCLINTON. I think not, and I will make a motion to amend the section so as to read in that manner.

Mr. KENNEDY. I object to changing the word "things" to "property." I think it would create difficulty.

Mr. DeLONG. I ask for a division of the question.

The question was taken on the first part of the amendment proposed by Mr. McClinton, to insert "person or" before the word "persons," and it was unanimously agreed to.

The PRESIDENT. The question now is on substituting the word "property" in the place of "things."

Mr. KENNEDY. I object, because there may be things to be seized which may not be property.

Mr. PARKER. Suppose you want to seize a dog; that it is not property, I believe.

Mr. DeLONG. It is a chattel real, perhaps.

Mr. McCLINTON. I do not know what thing there is on earth, liable to be searched for and seized, that would not be property.

Mr. BANKS. In some States, dogs are not recognized as property, and yet they are things which it may be desirable to search for.

Mr. LOCKWOOD. Can you get out a search warrant for anything that is not property?

Mr. DeLONG. I would like to ask where it is that dogs are not property? Blackstone says that all things in the world are property. He divides property into absolute, and qualified property. Absolute property is that which a man owns, and includes the domestic animals, as the horse. Qualified property includes wild and untamed animals, such as deer—

Mr. WARWICK. Will the gentleman allow me to ask him if ever, during his practice, since his admission to the bar, he has known of a case where dogs were not recognized as property?

Mr. DeLONG. The gentleman does not get my idea. Though they may not be absolute property, so that you could sue and recover for a dog if it were killed, still, that they are qualified property there can be no doubt.

Mr. BROSNAN. If they were not property, a man could not be prosecuted for the larceny of a dog, and consequently there would be no occasion for a search warrant.

Mr. McCLINTON. Why not insert the words "property or," before the word "things," in order to obviate the difficulty as to what constitutes property. I am not "tenacious," however, if I do represent Esmeralda County. [Merriment.] I will vary my amendment so as to make it read "thing or things."

The question was taken on the amendment as modified, and, there being objection, it was not agreed to.

Sections 19 and 20 were read, as follows:

SEC. 19. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 20. This enumeration of rights shall not be construed to impair or deny others retained by the people.

Mr. BANKS. I think the changes made in Section 18 were not required, but inasmuch as we have adopted them, for the sake of harmony and consistency in the section, I would like to have the words "thing or" inserted, as proposed by the gentleman from Esmeralda, (Mr. McClinton.)

Mr. BROSNAN. Yes; let us now make that change also.

The PRESIDENT. It is certainly necessary, so as to make the language conform to that which precedes it.

The amendment was agreed to by unanimous consent.

Mr. McCLINTOCK. If there are some things that are not property, I do not see that there would be anything unreasonable in making a further amendment, in the first clause. In order to conform to the balance of the section, we might let it read in this wise: "The right of the people to be secure in their persons, houses, papers, effects and things." [Laughter.]

RIGHT OF SUFFRAGE.

The Convention proceeded with the final reading of Article II, entitled Right of Suffrage.

The SECRETARY read Section 1, as follows:

SECTION 1. Every white male citizen of the United States (and laboring under the disabilities named in this Constitution) of the age of twenty-one years and upwards, who shall have actually resided in the State six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now are or hereafter may be elected by the people, and upon all questions submitted to the electors at such election.

Mr. BANKS. During the consideration of this article, on its passage, and after the adoption of the amendment on my motion, inserting the word "actually" before "resided," I heard objections raised by several gentlemen who thought that word did not fully cover the ground. I was not quite satisfied with it at the time, and it was suggested, I think by the chairman of the Judiciary Committee, (Mr. Brosnan,) or at any rate by some one, that the words "and not constructively," should be inserted after "actually." In accordance with that suggestion, I will now move to insert the words "and not constructively," so as to read: "who shall have actually, and not constructively, resided in the State six months," etc. That will certainly remove all doubts in regard to the matter.

The amendment was adopted by unanimous consent.

Section 2 was read, as follows:

SEC. 2. No person who has been or may be convicted of treason or felony, in any State or Territory of the United States, unless restored to civil rights, and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government, and no idiot or insane person, shall be entitled to the privilege of an elector.

Mr. COLLINS. I suggest whether it would not be an improvement to make this section a proviso added to Section 1, instead of a separate section. It appears to be of the nature of a qualification of Section 1, and I will move to strike out Section 2, and insert "provided that," the section then to run on as a part of Section 1.

The amendment was agreed to by unanimous consent. Sections 2 and 3 (as renumbered) were read, as follows:

SEC. 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum at public expense; nor while confined in any public prison.

SEC. 4. The right of suffrage shall be enjoyed by all persons otherwise entitled to the same who may be in the military or naval service of the United States: provided, that voters on said service shall be made to apply to the county and township of which said voters were last a resident at the time of their enlistment; and provided, that the payment of a poll tax, or a registration of such a voter shall not be required as a condition to the right of voting. Provision shall be made by law, regulating the manner of voting, holding elections, and making returns of such elections, wherein other provisions are not contained in this Constitution.

Mr. BROSNAN. I move to insert the word "further" after "provided," where it occurs the last time in Section 3, that being the second proviso.

The amendment was agreed to by unanimous consent.

Mr. BANKS. The proviso reads, "the registration of such a voter." I think it should be "voters"—in the plural.

Mr. BROSNAN. I move to strike out the word "a" before "voter."

Mr. BANKS. I think it should all be plural. The word "a" is undoubtedly wrong in that connection, and ought to be stricken out, but at the same time, it seems to me that the word "voter" should be changed to "voters," because all through the preceding part of the section the designation is in the plural. I will therefore move to amend by striking out the words "a voter," and inserting instead the word "voters."

Mr. BROSNAN. I have no objection.

The amendment proposed by Mr. Banks was adopted by unanimous consent.

Sections 4 to 8, inclusive, (as renumbered,) were read as follows:

SEC. 4. During the day on which any general election shall be held in this State, no qualified elector shall be arrested by virtue of any civil process.

SEC. 5. All elections by the people shall be by ballot, and all elections by the Legislature, or by either branch thereof, shall be viva voce.

SEC. 6. Provision shall be made by law for the registration of the names of the electors within the counties of which they may be residents, and for the ascertainment by proper proofs of the persons who shall be entitled to the right of suffrage, as hereby established, to preserve the purity of election, and to regulate the manner of holding and making returns of the same; and the Legislature shall have power to prescribe any other or further rules or oaths as may be necessary, as a test of electoral qualification.

SEC. 7. The Legislature shall provide by law for the payment of an annual poll tax of not less than two nor exceeding four dollars, from each male person resident in the State, between the ages of twenty-one and sixty years, (uncivilized American Indians excepted,) one-half to be applied for State, and one-half for county purposes; and the Legislature may, in its discretion, make such payment a condition to the right of voting.

SEC. 8. All persons qualified by law to vote for Representatives to the General Assembly of the Territory of Nevada, on the 31st day of March, 1864, and all

other persons who may be lawful voters in the said territory on the first Wednesday of September next following, shall be entitled to vote directly upon the question of accepting or rejecting this Constitution."

Mr. BROSNAN. Unless we shall be informed that the first Wednesday of September will be the day on which the Constitution is to be submitted, this last section will require amendment. We must bear that in mind, as regards this section.

The PRESIDENT. The only difference would be, that if the election takes place at a later day, an inconsiderable number of persons would be qualified to vote, who would not be on that day. Such being the only difference, it is not very material.

Mr. COLLINS. I hope the date will be left open to the last possible moment.

The PRESIDENT. I do not deem it necessary in this section. It only defines the time at which those who are to vote on the Constitution shall be qualified—that only those shall vote who are qualified voters on a particular day—and I do not think it is of sufficient importance to make any change. If it turns out that the election is to take place in October, instead of the date here mentioned, the only effect would be to preclude from voting those who may have become residents during the period of about a month, that is, from five to six months previous to the first Wednesday of September. All who are qualified in September would necessarily be qualified in October, and the number who would become legal voters in the intervening time would be but few.

Mr. COLLINS. I think the election ordinance will cover that matter.

The PRESIDENT. I am so confident that the amendment was made by Congress as petitioned for, that I think no change is necessary in this section; especially as the election would not be hurt[illegible] in any event.

Mr. BANKS. In examining the engrossed bills, the Committee on Phraseology found a number of cases where figures were used to express numbers and dates, although words should have been employed. In a number of instances the committee directed the change to be made, but I do not think it was done in every case. I move, therefore, that the Secretary be instructed to change figures to words, wherever they occur, except in numbering the sections or articles.

The motion was agreed to by unanimous consent.

Mr. KINKEAD. I move to amend the last clause in Section 6, by inserting after "and the Legislature shall have power to prescribe," the words "by law;" so that it will read: "And the Legislature shall have power to prescribe by law any other or further rules or oaths," etc.

The amendment was agreed to by unanimous consent.

Mr. MURDOCK. I move to amend Section 7, by striking out the word "uncivilized," before "American Indians."

I have this reason for that motion: I do not know that it will appear to other men as it does to me, but I, for one, am a great stickler for the idea of the races of men, and I think the Anglo-Saxon, the Celtic, or any other of the White or Caucasian races, is a far superior race of men to the Indian, the Negro, or any of the colored races. Now, if we prohibit the American citizen of African descent from voting, why not prohibit all the rest of the colored races, and say to them that we consider ourselves to be their superiors? Why should we condescend to make any of the inferior races our equals? These, in short, are my reasons for this amendment.

Mr. WARWICK. In reply to that I will take the liberty of calling one gentleman by name: Suppose that John R. Ridge were a citizen of Nevada, would gentlemen be willing to admit him to a position of equality?

Mr. BANKS. Yes, sir; certainly; socially.

Mr. WARWICK. Well, we will suppose him to be a loyal man; would they be willing to admit him to political equality? I would just as soon allow any Cherokee Indian to vote, or any member of the Five Nations, if he were a loyal American citizen. But I really do not see, sir, why any such distinction should be made in our fundamental law.

The PRESIDENT. I will call the attention of gentlemen to the fact, that this section merely makes provision for the poll tax. There is in another section a positive inhibition of the right to vote of any except white male citizens possessing certain qualifications.

Mr. COLLINS. But the poll tax is required from every negro.

Mr. PROCTOR. But it seems to me that, with a particular construction which may be given it, this section will permit every man to vote who pays his poll tax. It says the Legislature may make such payment a condition to the right of voting, and that would include civilized American Indians and everybody else. According to that we might as well adopt at once the amendment proposed by the gentleman from Washoe, (Mr. Nourse,) to strike out the word "white."

The PRESIDENT. This section refers only to the poll tax. We have provided that a particular class of men shall be allowed to vote, and that certain others shall not. Then in this section we designate who shall be required to pay a poll tax, and authorize the Legislature to provide that those who fail to pay such poll tax, though otherwise qualified, may be debarred from voting.

Mr. PROCTOR. But each inhabitant of the State is compelled to pay a poll tax, and if he pays it, and it is made a condition to the right of voting, what does that mean? It looks to me like declaring that anybody who pays his poll tax will have a right to vote.

Mr. MURDOCK. I suppose it is well understood in relation to this poll tax, that I, for one, have been and am utterly opposed to establish-

ing any property qualification at all, in relation to voting. It makes no difference to me whether a man be worth a hundred thousand dollars, or not a dollar, so far as relates to his right of suffrage. But I say frankly that I am a stickler for the rights of men, and the words "uncivilized Americans" read badly to me, even although qualified by the word "Indian." When it says, in that connection, "uncivilized American Indians," it really does not go down quite right with me.

Mr. COLLINS. It seems to me the gentleman is mistaken as to the sense in which those words are used in this section. Section 7 has nothing to do with the right of voting, only so far as it says that the Legislature may make it a condition precedent to the right of voting, that the poll tax shall be paid. It requires Negroes, Chinese, and every class of men to pay the poll tax, except uncivilized American Indians. If they are civilized Indians they are not excepted, and farmers, mechanics and miners who are white men, are all placed, so far as relates to the payment of the tax, on a level with the negroes, Chinamen, etc.

Mr. MURDOCK. Inasmuch as, having been absent from the Convention for some little time, I was not fully aware of what had been the action of the Convention and what was the business before it, I will withdraw my amendment, and if what I have said is in the wrong place, I will withdraw that also. Nevertheless, I would like to have such an amendment put in at the right place.

The PRESIDENT. Section 8, I observe, provides that not only those who may be lawful voters on the first Wednesday of September, but also all who were lawful voters on the 21st of March last, shall be entitled to vote on the Constitution. I would suggest whether that will not extend the right of voting to those who may not really be entitled to it. For instance, a man may have acquired the right of voting by residence on the 21st day of March, but nevertheless, within this interval, before the first Wednesday of September, he may have ceased to be a resident, and, consequently, a legal voter, by reason of acquiring residence and the right to vote elsewhere. Will not this section yet give him the right to vote here, at such election, although he may be here but temporarily?

Mr. COLLINS. I think it would, but there is likely to be very few if any cases of that sort, and the provision is precisely that which is prescribed in the Enabling Act. Section 3 of the Enabling Act provides that all persons shall be entitled to vote upon the acceptance or rejection of the Constitution, who were qualified electors at the date of the passage of the Act, which was March 21st, 1864.

The PRESIDENT. We certainly cannot go behind the requirements of the Enabling Act.

No further amendment was proposed to the section.

DISTRIBUTION OF POWERS.

The SECRETARY read Article III, entitled Distribution of Powers, as follows:

ARTICLE III.

DISTRIBUTION OF POWERS.

SECTION 1. The powers of the Government of the State of Nevada shall be divided into three separate departments—the Legislative, the Executive, and Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Mr. BANKS. It seems to me that we ought either to insert the word "the" before "Judicial," or leave out the "the" before the words immediately preceding. I will move to amend by inserting "the" before the word "Judicial," so as to read "the Legislative, the Executive, and the Judicial."

The amendment was agreed to by unanimous consent.

No further amendment was offered.

LEGISLATIVE DEPARTMENT.

The Convention next took up Article IV, entitled Legislative Department.

The SECRETARY read Sections 1 and 2, as follows:

SECTION 1. The Legislative authority of this State shall be vested in a Senate and Assembly, which shall be designated "The Legislature of the State of Nevada," and the sessions of such Legislature shall be held at the seat of Government of the State.

SEC. 2. The members of the Legislature shall be biennial, and shall commence on the first Monday of January next ensuing the election of its members, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation, except as hereinafter provided in this Constitution.

The PRESIDENT. I desire to have the Secretary read the section which was subsequently adopted, providing for annual sessions, so that we can ascertain how it harmonizes with this section. It will be found in the Schedule.

The SECRETARY. It is Section 11 of the Schedule, as renumbered, as follows:

SEC. 12. The first regular session of the Legislature shall commence on the second Monday of December, A. D. 1864, and the second regular session of the same shall commence on the first Monday of January, A. D. 1866, and the third regular session of the Legislature shall be the first of the biennial sessions, and shall commence on the first Monday of January, A. D. 1867, and the regular sessions of the Legislature shall be held thereafter biennially, commencing on the first Monday of January.

The PRESIDENT. The section now under consideration makes provision for the meeting of the Legislature, to be composed of the Senate and Assembly, and therefore it immediately becomes a part of the system of our government. The section in the Schedule merely regulates the matter of annual sessions, by providing that after 1867, the sessions shall be biennial. Now the sessions necessarily commence in the January succeeding the election of As-

assembly-men, but not uniformly in the January succeeding the election of Senators, as but one-half of the Senators are elected at one election. I suggest, therefore, that the language of the section might possibly lead to some misapprehension.

Mr. COLLINS. Does not Section 4, regulating the election of Senators, cover the ground, and prevent any such misapprehension?

The PRESIDENT. But Section 3 reads: "The members of the Legislature shall be biennial, and shall commence on the first Monday of January next ensuing the election of its members;" when in fact the sessions are to begin on the first Monday of January succeeding the election of the members of the Assembly, and a portion of the members of the Senate.

Mr. BANKS. I will move to amend that part of the section, so as to read: "next ensuing the election of members of the Assembly." I think that amendment is desirable, and will cover the whole ground.

The PRESIDENT. My colleague (Mr. Kinkead) desires, I understand, to suggest an amendment to another part of the section.

Mr. KINKEAD. It is merely a transposition of a sentence; this amendment will not be affected by it.

Mr. BANKS. My amendment is to strike out the word "its," where it occurs before the word "members," and insert after "members," the words "of the Assembly," so as to read, "next ensuing the election of members of the Assembly."

The amendment was agreed to by unanimous consent.

Mr. KINKEAD. Now I move to amend the same section by a transposition, so that the words "except as hereinafter provided in this Constitution," will follow immediately after "members of the Assembly."

Mr. BROSNAN. I would inquire if the exception is designed to apply merely to the biennial sessions?

Mr. KINKEAD. Yes, sir; but the section reads awkwardly now.

The PRESIDENT. It occurs to me that it is not necessary to retain those words. If we do, will not a corresponding change be necessary in other sections? For instance, where we provide for the election of State officers for four years, and fix the terms of Senators. If, on the contrary, we strike out those words, this being the general framework of our proposed system, it seems to me that the whole will be rendered harmonious.

Mr. KINKEAD. I would prefer to have those words stricken out.

Mr. BROSNAN. That was our idea at first, and I hope it will be done, because, after two or three years there will be no necessity for any such exception.

The PRESIDENT. It is sufficiently provided for in the Schedule.

Mr. KINKEAD. I withdraw my first motion, and move instead to strike out those words: "except as hereinafter provided in this Constitution."

The amendment was agreed to by unanimous consent.

Sections 5 and 6 were read, as follows:

Sec. 5. The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November, and their terms of office shall be two years from the day next after their election.

Sec. 6. Senators shall be chosen at the same time and places as members of the Assembly, by the qualified electors of their respective districts, and their term of office shall be four years from the day next after their election.

Mr. COLLINS. I suppose that is designed to prevent the forming of Senatorial Districts, if the Legislature should be so disposed. The requirement that Senators shall be chosen at the same time and places as members of the Assembly, will prevent the Legislature, I take it, from organizing Senatorial Districts.

The PRESIDENT. I do not perceive that it has such application. It provides only that they shall be elected at the same time—

Mr. COLLINS. The same time and the same places.

The PRESIDENT. Certainly; at the same places of voting. That is as I understand it.

Mr. BROSNAN. That is the way I understand it.

Mr. COLLINS. I do not know but that is correct.

Sections 5 and 6 were read, as follows:

Sec. 5. Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one-third, nor more than one-half of that of the members of the Assembly.

Sec. 6. Each House shall judge of the qualifications, elections, and returns of its own members, choose its own officer, (except the President of the Senate,) determine the rules of its proceedings, and may punish its members for disorderly conduct, and with the concurrence of two-thirds of all the members elected, expel a member.

The PRESIDENT. That should read—"determine the rules of its proceedings," instead of "the proceedings."

Mr. COLLINS. I move to strike out "the," and insert "its," instead.

The PRESIDENT. It is a mere verbal correction; there being no objection the Secretary will make the amendment.

Sections 7, 8, and 9 were read, as follows:

Sec. 7. Either House, during the session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behavior in its presence; but such imprisonment shall not extend beyond the final adjournment of the session.

Sec. 8. No Senator or member of Assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

Sec. 9. No person holding any lucrative office under the Government of the United States, or any other

thereof, shall be eligible to any civil office of profit under this State; provided, that postmasters whose compensation does not exceed five hundred dollars per annum, or Commissioners of Deeds, shall not be deemed as holding a lucrative office.

Mr. McCLINTON. I wish to call attention to the wording of the proviso in Section 9. Should it not read "and Commissioners of Deeds," rather than "or Commissioners of Deeds?" It is evidently incorrect, and I move to substitute the word "and," for "or."

Mr. PROCTOR. I would like to know what that language is there for? I do not understand that any such office exists under the United States Government as Commissioner of Deeds.

The PRESIDENT. I will reply to the gentleman, as I recollect a discussion on this subject in the Convention of last year. It is well known that there are Commissioners of Deeds residing in this State, holding office under, and commissioned by the Executives of other States, and the object of incorporating the proviso was that they should not be excluded from holding office under the Government of this State. Otherwise, a Notary Public could not be a Commissioner of Deeds for California, and it is sometimes very convenient for a Notary to hold such a commission.

Mr. PROCTOR. But it says: "holding any lucrative office under the Government of the United States."

Mr. KENNEDY. "Or any other power."

Mr. McCLINTON. As California, for instance; that might be deemed to be another power.

Mr. PROCTOR. I did not know but it was intended to refer to United States Commissioners.

The PRESIDENT. My understanding is, that it includes only Commissioners of Deeds appointed by authority of other States.

Mr. McCLINTON. My amendment has not been passed upon yet, I believe. It is to strike out the word "or," in the proviso, and insert "and."

Mr. BROSNAN. I think the word "or" is appropriate there. I find that the Constitution of California contains the word "or" in that connection, and I think the amendment is wrong, although I seconded it when it was offered.

The PRESIDENT. The Chair understands that the alteration is objected to.

Mr. McCLINTON. As I am unsupported I subside, although I still think the amendment would be correct.

Sections 10 to 14, inclusive, were read, as follows:

SEC. 10. Any person who shall be convicted of the embezzlement or defalcation of the public funds of this State, or who may be convicted of having given or offered a bribe to procure his election or appointment to office, or received a bribe to aid in the procurement of office for any other person, shall be disqualified from holding any office of profit or trust in this State; and the Legislature shall, as soon as practicable, provide by law for the punishment of such defalcation, bribery, or embezzlement, as a felony.

SEC. 11. Members of the Legislature shall be privileged from arrest on civil process during the session of the Legislature, and for fifteen days next before the commencement of each session.

SEC. 12. When vacancies occur in either House, the Governor shall issue writs of election to fill such vacancy.

SEC. 13. A majority of all the members elected to each House shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as such House may prescribe.

SEC. 14. Each House shall keep a journal of its own proceedings, which shall be published, and the ayes and noes of the members of either House on any question shall, at the desire of any three members present, be entered on the journal.

[Mr. DuLong in the chair.]

The PRESIDENT pro tem. I suggest that we strike out the words "ayes and noes," in the section just read, and insert "yeas and nays," instead. We do not want them to record a man's ayes and noes. [Merriment.]

Mr. KINKHAID. I will move that amendment. Some of them might have but one eye.

The amendment was agreed to by unanimous consent.

Sections 15, 16, and 17 were read, as follows:

SEC. 15. The doors of each House shall be kept open during its session, except the Senate while sitting in Executive session, and neither shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be holding their sessions.

SEC. 16. Any bill may originate in either House of the Legislature, and all bills passed by one may be amended in the other.

SEC. 17. Each law enacted by the Legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title, but in such case the act as revised, or section as amended, shall be re-enacted and published at length.

The PRESIDENT pro tem. I suggest that we add the word "only," after "title," where it occurs the second time in Section 17, so that the clause will read—"and no law shall be revised or amended by reference to its title only."

Mr. KINKEAD. Certainly. Let them "read their title clear." [Merriment.]

The amendment suggested was agreed to by unanimous consent.

Section 18 was read, as follows:

SEC. 18. Every bill shall be read by sections, on three several days, in each House, unless, in case of emergency, two-thirds of the House, where such bill may be pending, shall deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on the final passage of every bill, or joint resolution, shall be taken by ayes and noes, to be entered on the journals of each House; and a majority of all the members elected to each House shall be necessary to pass every bill or joint resolution, and all bills or joint resolutions so passed, shall be signed by the presiding officers of the respective Houses.

Mr. KINKEAD. I move that we make the same alteration there as in a previous section; inserting "yeas and nays," in place of "ayes and noes."

The amendment was agreed to by unanimous consent.

The PRESIDENT pro tem. It is customary in California for the Secretary of the Senate and Clerk of the Assembly, also, to certify the passage of every bill, but this section only provides that bills shall be signed by the presiding officers. A House bill, for instance, is usually signed by the Speaker and countersigned by the Clerk, and is then sent to the Senate, where it is signed by the President and Secretary of the Senate. I will move to amend the section by adding the words—"and by the Secretary of the Senate and Clerk of the Assembly."

The amendment was agreed to by unanimous consent.

Sections 19 and 20 were read, as follows:

Sec. 19. No money shall be drawn from the Treasury but in consequence of appropriations made by law. An account of the receipts and expenditures of the public money shall be published from time to time, as shall be directed by and provided for by the Legislature.

Sec. 20. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of Justices of the Peace and of Constables; for the punishment of crimes and misdemeanors; regulating the practice of courts of justice; providing for changing the venue in civil and criminal cases; granting divorces; changing the names of persons; granting names, erecting plats, streets, alleys and public squares; summoning and impaneling grand and petit juries, and providing for the compensation; regulating county and township business; regulating the election of county and township officers; for the assessment and collection of taxes for State, county, and township purposes; providing for opening and conducting elections of State, county, or township officers, and designating the places of voting; providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities.

Mr. KINKEAD. There were certain instructions adopted, relative to the form of enrolling Section 20—that each clause specifying a subject prohibited should be distinguished by commencing a new line, beginning with a capital letter, and ending with a colon, so as to constitute a separate sentence.

The SECRETARY. That was the instruction, and I will amend the section accordingly.

Section 21 was read, as follows:

Sec. 21. In all cases enumerated in the preceding sections, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

Mr. KINKEAD. That word should be "sections," so as to read, "in all cases enumerated in the preceding section." It refers to that section alone, and I move to strike out the final *s* from the word "sections."

The amendment was agreed to by unanimous consent.

Sections 22 to 26, inclusive, were read, as follows:

Sec. 22. Provision may be made by general law for bringing suit against the State as to all liabilities originating after the adoption of this Constitution.

Sec. 23. The enacting clause of every law shall be as follows: "The People of the State of Nevada, represented in Senate and Assembly, do enact as follows"—and no law shall be enacted except by bill.

Sec. 24. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

Sec. 25. The Legislature shall establish a system of county and township governments, which shall be uniform throughout the State.

Sec. 26. The Legislature shall provide for the election of a Board of County Commissioners, in each county of three County Commissioners shall jointly and individually perform such duties as may be prescribed by law.

Mr. KINKEAD. The word "three" is not necessary there before County Commissioners.

The PRESIDENT pro tem. It should be "such." If there is no objection, the word "such" will be substituted for "three," so as to read, "and such County Commissioners shall jointly and individually perform," etc.

The amendment was agreed to by unanimous consent.

Mr. KINKEAD. I think we should insert those words "by law" after "provide," in the first line, so that it will read: "the Legislature shall provide by law."

Mr. BROSNAN. We have "by law" at the end of the section.

Mr. McCLINTON. But as it now reads the Legislature does not provide for the election of County Commissioners by law; it only prescribes their duties by law. I think the amendment is necessary.

The amendment was agreed to by unanimous consent.

Sections 27 to 30, inclusive, were read, as follows:

Sec. 27. Laws shall be made to exclude from serving on juries all persons not qualified electors of this State, and all persons who shall have been convicted of bribery, perjury, forgery, larceny, or other high crimes, unless restored to civil rights; and laws shall be passed regulating elections, and prohibiting, under adequate penalties, all undue influences thereon, from power, bribery, tumult, or other improper practice.

Sec. 28. No money shall be drawn from the State Treasury as salary or compensation to any officer or employee of the Legislature, or either branch thereof, except in cases where such salary or compensation has been fixed by a law in force prior to the election or appointment of such officer or employee; and the salary or compensation so fixed shall neither be increased nor diminished so as to apply to any officer or employee of the Legislature, or either branch thereof, at such session; *provided*, that this restriction shall not apply to the first session of the Legislature.

Sec. 29. The first regular session of the Legislature under this Constitution may extend to ninety days, but no subsequent regular session shall exceed sixty days, nor any special session convened by the Governor exceed twenty days.

Sec. 30. A homestead, as provided by law, shall be exempt from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon; *provided*, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife; and no laws shall be enacted providing for the recording of any homestead, except in the county in which the same may be situated.

Mr. BROSNAN. What does that language mean in Section 30, where it says the homestead shall not be alienated without the joint consent of husband and wife, "where that relation exists?" If we say, "without the joint

consent of husband and wife," is not that sufficient?

The PRESIDENT *pro tem.* I understood the section contemplates that the homestead may be claimed as such by either the husband or the wife, and may then be held by either. It therefore provides that it shall not be alienated except by the consent of both, until that relation shall cease to exist. I think that is the object of those words.

Mr. KINKEAD. Following that it reads: "no property shall be exempt from sales for taxes;" that word should be "sale," instead of "sales." I move to strike out the final *s*.

The PRESIDENT *pro tem.* There being no objection, the Secretary will make that amendment. It is merely a clerical error.

Sections 31 and 32 were read, as follows:

SEC. 31. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property, as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

SEC. 32. The Legislature shall provide for the election by the people of a Clerk of the Supreme Court, County Clerks, County Recorders, who shall be ex-officio County Auditors, District Attorneys, Sheriffs, County Surveyors, Public Administrators, and other necessary officers, and fix by law their duties and compensation. County Clerks shall be *ex officio* Clerks of the Courts of Record in and for their respective counties.

The PRESIDENT *pro tem.* It has been suggested to me that hereafter we may have a Board of Supervisors elected in each county, and that unless we amend this Section 32, the County Clerks cannot be *ex officio* clerks of such Boards, as they are in all the counties in California, but it will be necessary for the Boards to elect their own clerks. I will therefore suggest to the Convention that we add to the section—"and also *ex officio* clerks of the Board of Supervisors, or County Commissioners, of any county in the State in which such Board is organized."

Mr. FRIZELL. I believe there is a section of our Constitution which provides that the County Clerks shall be *ex officio* clerks of the Courts of Record.

The PRESIDENT *pro tem.* This is the section which has just been read.

Mr. FRIZELL. Then, taking it into consideration that they are elected as County Clerks, it seems to me that it must necessarily be inferred that they are to be clerks of the Boards of Supervisors, and of the Boards of Equalization, for what other business is there which belongs to the office of a County Clerk?

The PRESIDENT *pro tem.* They have to perform just such duties as are prescribed by the Constitution, and no others.

Mr. COLLINS. We have provided elsewhere for the election of County Commissioners; is it desired that we shall provide that County Clerks shall be *ex officio* members of the Board of County Commissioners?

The PRESIDENT *pro tem.* No, no! I do not care whether they are called "Supervisors" or "Commissioners;" my suggestion is that the section should be so amended as to make the County Clerks *ex officio* clerks of those county Boards, whether they are called Boards of Supervisors or Boards of Commissioners.

Mr. McCLINTON. Unless we do that I think any Board of County Commissioners would have power to appoint whomsoever they pleased as clerk.

The PRESIDENT *pro tem.* I think so, too.

Mr. FRIZELL. The Boards of County Commissioners are elected to transact the business of the county. Then when you elect a County Clerk, it appears to me that there can be no misunderstanding of this language, but it necessarily follows that he is clerk of the Board of Supervisors, or County Commissioners, in each county.

The PRESIDENT *pro tem.* By what rule of law?

Mr. FRIZELL. By precedent, implication and everything else.

The PRESIDENT *pro tem.* I know very well that they have had to provide for it by statute in California, in order to prevent the Boards of Supervisors from electing their own clerks.

Mr. BROSNAN. I move to amend by adding after "County Auditors," the words, "Boards of County Commissioners."

Mr. KINKEAD. That is to follow the provision that the County Recorders shall be *ex officio* County Auditors? Well, if there is any doubt about it, I think we ought to insert those words. It will do no harm. The section makes the County Recorder *ex officio* County Auditor.

Mr. COLLINS. I think the amendment suggested will come in better at the end. I move to insert in the last clause, after "Courts of Record," the words "and also of the Boards of County Commissioners."

Mr. BARRY. I think it would be better to leave it as it is, and then the Legislature will have power to pass a law requiring County Clerks to act, *ex officio*, as Clerks of the Boards of County Commissioners. It should only be required in the smaller counties, for, in my judgment, it would operate badly in the larger counties. A Clerk might appoint a deputy, for instance, who would be very objectionable to the Board of Supervisors, or Commissioners. I know, in San Francisco, the Board of Supervisors has the choice of its own Clerk.

Mr. KENNEDY. I move that the time for the recess be extended ten minutes, so as to dispose of this matter.

Mr. WARWICK. I rise to a point of order, that the time for the recess has arrived and passed.

The PRESIDENT *pro tem.* The point is well taken.

The hour of 12 o'clock, noon, having arrived—

The PRESIDENT *pro tem.* declared the Convention at recess until 2 o'clock, P. M.

AFTERNOON SESSION.

The Convention re-assembled at 3 o'clock, P. M., and was called to order by Mr. Church, in the temporary absence of the President.

Mr. KINKEAD. I move that Mr. Mason take the chair.

The question was taken and the motion was agreed to.

Mr. MASON declined, the President having arrived.

[The President in the chair.]

The SECRETARY reported that there was not a quorum of members in attendance.

CALL OF THE HOUSE.

On motion of Mr. GRISWOLD, a call of the House was ordered, and the roll being called, the following members responded to their names: Messrs. Austin, Bates, Chapin, Collins, Crawford, Cromwell, Folcott, Gibson, Hawley, Kennedy, Kinkead, Lockwood, Mason, McClinton, Parker, Shotwell, Warwick, Wetherill, and Mr. President. Present, 19; absent, 20.

On motion of Mr. COLLINS, by unanimous consent, leave of absence was granted to Mr. Friedl.

The Sergeant-at-Arms was directed to arrest and bring in those members who were absent without leave.

ADDITIONS OF TAXATION.

Mr. LOCKWOOD. While we are waiting, I will say to the members of the Convention, that the section which was incorporated in the Schedule on the motion of the gentleman from Storey, (Mr. Chapin,) limiting taxation, I am satisfied is in direct conflict with another provision of the Constitution, contained in the article on Finance and State Debt. I have the two sections before me, and desire to read them. Section 2 of the article on Finance, reads as follows:

SEC. 2. The Legislature shall provide as nearly [sic] as sufficient to defray the estimated expenses of the State for each fiscal year, and whenever the expenses of any year shall exceed the income, the Legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year, or two years.

Now mark the language, and compare it with the following, which has been incorporated in the Schedule:

"For the first three years after the adoption of this Constitution, the Legislature shall not levy a tax for State purposes exceeding one per cent. per annum on the taxable property in the State."

I take it, there is a very wide discrepancy.

Mr. CHAPIN. Is not the gentleman aware that there are many provisions contained in the Schedule which are in direct conflict with provisions in the general framework of our Constitution? That is the object and purpose of the Schedule—to provide for matters of a merely temporary nature.

Mr. LOCKWOOD. No, sir. As I understand it, the Schedule is to provide for certain contingencies attending the transitional state—while we are changing from a Territorial to a State Government. And here we say in our Constitution that the Legislature shall provide a tax sufficient to defray all the expenses of the State Government. We provide that the members of the Legislature shall be paid eight dollars a day, that the Judges of the Supreme Court shall receive seven thousand dollars a year, and so on and so forth; and then we make it the duty of the Legislature to levy a tax sufficient to cover all these expenses. The Legislature is to make a calculation, and levy an assessment sufficient to pay all the expenses; not only all the debts they create, but also all the estimated expenses for the year to come. But after having made such provision, we then turn round and say in the Schedule that the Legislature is inhibited from levying such a tax. I think the provision is palpably wrong, and should not be placed anywhere in our Constitution. For one, I certainly object to it, although I expect to be voted down, as I am generally supposed to be wrong. I opposed the section when it was originally incorporated in the Schedule, for the reason that I considered it as conflicting with that which had been previously adopted, although I did not then have the particular section to refer to.

The PRESIDENT. It is palpably a conflict; there can be no question about it.

Mr. COLLINS. What is before the Convention?

The PRESIDENT. We are acting under a call of the House. This subject has merely been called up informally.

Mr. LOCKWOOD. I suppose we may discuss the subject without a quorum, although we can take no vote. I merely wanted to call the attention of members to the fact that there is a direct conflict between the two sections.

Mr. WARWICK. Then I suggest that we let them both stand as they are, and the Legislature will have to decide which is right. I am tolerably well satisfied which way it will go.

The PRESIDENT. It would be a sad commentary on our Constitution, that the Legislature has to decide so important a question.

Mr. WARWICK. It would be a sadder commentary that it does not give the Legislature power to provide for the wants of the government.

Mr. CHAPIN. I will call attention to another just such discrepancy. We provide that the Governor and other State officers shall be elected for a term of four years, and then we say in the Schedule that those officers first elected shall be limited to only two years.

The PRESIDENT. The judicial officers are excepted. That section is proper enough, but instead of making the judges of the Supreme Court, and the State officers, first-class creditors of the State, as the Constitution provides, this section of the Schedule referred to by my colleague, in classifying the appropriations, makes them second-class creditors.

Mr. COLLINS. I take it that a man who

nation his will, has power to add a codicil, and so a Constitutional Convention, I suppose, has authority to provide when the various constitutional provisions shall take effect, and may do so by a Schedule or otherwise.

The PRESIDENT. We provide, in the first place, that the Legislature shall raise revenue sufficient to pay expenses, and then we provide thereafter that they shall not do so for the first three years.

Mr. COLLINS. Well, I certainly hope the subject will be ventilated before we adjourn.

The PRESIDENT. It has already been pretty well ventilated, and the proposition was carried by a majority of about two-thirds.

Mr. BROSNAN. I give notice that when we reach that article, on its final revision, I shall make a proposition to the Convention to strike out altogether that portion in relation to the classification of appropriations.

The PRESIDENT. If that is done, it will demonstrate that there has been a material change of opinion since yesterday.

Mr. COLLINS. It is the right of every man to change his opinions.

The PRESIDENT. This discussion is all informal, and it is understood of course that it constitutes no part of our proceedings.

Messrs. Brosnan and DeLong having appeared and taken their seats, making a quorum,

On motion of Mr. GIBSON, further proceedings under the call of the House were dispensed with.

RECESS.

Mr. HAWLEY. Now I ask for a short recess, in order to enable the Enrolling Committee to get through, and make their final report. I think they can be ready in about fifteen minutes.

The question was taken, and the motion was agreed to.

Accordingly, at fifteen minutes after two o'clock, the Convention took a recess.

The Convention was again called to order by the President, at fifteen minutes before three o'clock.

CALL OF THE HOUSE.

On motion of Mr. LOCKWOOD, a call of the House was ordered, and the following members responded to their names: Messrs. Banks, Belden, Brosnan, Chapin, Collins, Crawford, Crosman, DeLong, Folsom, Gibson, Hawley, Kinkead, Lockwood, Mason, McClinton, Parker, Proctor, Tagliabue, Wetherill, and Mr. President. Present, 20; absent, 12.

A quorum being present, on motion of Mr. LOCKWOOD, further proceedings under the call were dispensed with.

ENROLLMENT.

Mr. HAWLEY, from the Committee on Enrollment, submitted the following report:

To the President of the Constitutional Convention:

The Committee on Enrollment beg leave respectfully to report that they have examined Article IV, entitled Legislative Department, and Article V, entitled Executive Department, and find the same correctly enrolled. The committee also found it necessary to correct certain clerical errors in Articles VII, VIII, XI, and XV. A. T. HAWLEY, Chairman.

Mr. HAWLEY. I wish to state that the original engrossed copies were not furnished to the enrolling clerk, but instead, copies made up partly of written words, and partly from slips cut from printed copies of the old Constitution and newspaper reports. In some cases differences existed in these copies, and in others, subsequent changes made by the Convention had not been noted in the copies furnished. I think, therefore, that the errors which have been detected by the Enrolling Committee are not altogether chargeable as the fault of the enrolling clerk.

Mr. BANKS. Did the committee compare the enrolled with the engrossed copies?

Mr. HAWLEY. Yes, sir; certainly.

The PRESIDENT. I think it will save time if, instead of considering the report now, we delay it until we come to the final reading of the several articles reported. If there is no objection, that course will be taken.

Mr. BANKS. I hope, then, the gentleman from Douglas, (Mr. Hawley,) will make it his business to propose the necessary amendments as each section is read.

Mr. KINKEAD. They are all noted on the enrolled copy.

BOUNDARY MEMORIAL.

Mr. CHAPIN. I presume there will not be a better opportunity than the present to call attention to one subject, which in my judgment requires some further action before we finally adjourn. In Article XIV, after describing the boundary of our State, we have added this proviso:

"And whenever Congress shall authorize the addition to the Territory or State of Nevada of any portion of the territory on the eastern border of the aforesaid described State, not exceeding, in extent one degree of longitude, the same shall thereupon be annexed within, and become a part of, this State."

The PRESIDENT. Would it not be the better course to proceed consecutively with the different articles and sections?—and then the gentleman can submit his proposition when that section is reached.

Mr. CHAPIN. My object in calling up the matter now is this: It occurs to me that there may be a necessity for adopting a memorial to Congress, and if it shall be the pleasure of the Convention to do so, some little time might be required to perfect the memorial.

The PRESIDENT. Very well; I was under the impression that the gentleman desired to propose an amendment.

Mr. CHAPIN. We have made provision, as appears by the language which I have read, for an addition on our eastern border to the extent of one degree, provided that Congress shall be pleased to grant such addition to us, but we have neglected to make provision for any mo-

memorial or representation to Congress, giving expression to that desire on our part, and on the part of the people of Nevada. We are certainly, all of us, anxious to secure that addition of one degree, which in our infancy will be of great advantage, and, in the future, will undoubtedly be of almost incalculable value to our young State. Those of us who were present in the Convention of last year, well remember the able and eloquent remarks, in reference to the importance of securing this strip of territory, made by that worthy and honored man, then a representative of Lander County, who occupied the seat at my left hand here—that good man, now gone from us; whose memory I honor and cherish, and whose wise counsels are written on many public records, here and elsewhere. I refer to the late Judge Ralston. The great importance to Nevada of securing that addition to her territory, was ably set forth by him in that Convention, and he was appointed chairman of a committee selected to draft a memorial to Congress in reference to the subject. It seems to me that it is necessary for us to take similar action, by the adoption of the same or a like memorial. I have therefore taken the pains to prepare a copy of that memorial, with such alterations as are rendered necessary in consequence of changes of circumstances occurring since the former Convention assembled; and I have prefixed thereto such a resolution as in my judgment would be appropriate. Now I ask that the Secretary read the resolution and memorial.

The SECRETARY read as follows:

Resolved, That the Delegate of the Territory of Nevada, or the Senators and Representative of Nevada in Congress, in case said Territory shall become a State, be requested to present the annexed memorial, and urge its favorable consideration by Congress, and the passage of an act in accordance therewith:

To the Senate and House of Representatives of the Congress assembled:

The memorial of the delegates assembled in the Territory of Nevada to form a State Constitution, respectfully represents:

That the boundary of said Territory (or State) of Nevada should be changed so that the line separating Nevada from Utah Territory shall pass from North to South on the thirty-seventh degree of longitude west from Washington. That this division would be just to Nevada, and to Utah Territory, placing them about equal in geographical extent, and enabling each to form State Governments of convenient size; but if the thirty-eighth degree of longitude shall remain the western boundary of Utah Territory, it will leave Nevada of contracted dimensions, and of much greater length than breadth.

That the trust of country your memorialists desire to have added to Nevada is the undisputed wilderness, with the exception of the way-stations thereon established by the U. S. Mail Company; and a very few way-stations on the southern route from Salt Lake to Los Angeles, and some recent mining settlements, the interests of which are identical with those of the citizens of Nevada.

That the line dividing Nevada and Utah Territories, as at present established, will be productive of serious inconvenience to the inhabitants, upon the settlement of the country adjacent thereto; by dividing said settlements, rendering as it does in the Goose Creek Mountains and surrounding valleys, many of the settlements, being separated from their associated valleys, and supplied with wood, water, and grass, the necessities of which is of much greater necessity to Nevada than to Utah—the latter Territory having an abundance of agricultural lands, whilst the former contains but a very limited quantity; whereas if the line be removed one degree eastward the inconvenience will be obviated—the arable lands or valleys connecting undivided, and an appropriate natural dividing line formed by the Sierras of extensive adult dimensions, which can never be inhabited.

Your memorialists would therefore respectfully ask of your honorable bodies, that a law be passed declaring the thirty-seventh degree of longitude west of Washington to be the eastern boundary line of the Territory or State of Nevada.

And your memorialists, as in duty bound, will ever pray.

Mr. CHAPIN. I offer that resolution, and the memorial with it, and move that they be referred to a special committee of three.

The PRESIDENT. I suggest that the gentleman should move their adoption now, and thus save the necessity of delay by the appointment of a committee. There can be no doubt, I think, that such would finally be the action of the Convention, if a committee should consider the subject and report upon it.

Mr. CHAPIN. Well, if it is the pleasure of the Convention, I will make that motion.

Mr. PROCTOR. I think the memorial had better be referred, for the purpose of ascertaining some facts in relation to the proposed boundary, and for this reason: I am under the impression that the change proposed would take in a large settlement now included within the boundaries of Utah Territory, namely, what is called the Cotton-growing country. I do not think we would care anything about that.

Mr. KINKEAD. The line runs west of that.

Mr. GIBSON. It does not touch those settlements in Utah by sixty miles.

Mr. COLLINS. Judge Ralston declared emphatically, in the last Convention, that the line would run through a desert, but outwardly from that line the character of the country, he said, improved materially.

Mr. LOCKWOOD. I hope it will be referred to a committee to inquire whether it be desirable that such action should be taken by Congress. With all deference to the gentleman from Storey, (Mr. Chapin,) I think that point had better be considered, because times have changed a good deal since the Convention of last year, and the country has been settled in some extent, out that way. I suggest that the gentleman from Lander (Mr. Warwick) should be on the committee, as he is acquainted with the country.

The PRESIDENT. My suggestion was that the Convention had better act upon the matter now, for the reason that we desire to get through our business some time to-day or to-night. However, if it is the pleasure of the Convention, it may be referred.

Mr. CHAPIN. That was my proposition—to refer it to a committee of three, unless members prefer to act upon it now.

Mr. McCLINTOCK. I do not see the necessity

for its reference, as the committee would undoubtedly report it back just as it is.

The PRESIDENT. If there is no objection, I will put the question on the adoption of the resolution and memorial, as read.

The question was taken, and the resolution and memorial were unanimously adopted.

Mr. COLLINS. How will the memorial be presented?

The PRESIDENT. The resolution provides that it shall be presented to Congress by our Territorial Delegate, or by our Senators and Representative in Congress, in case of our admission as a State.

Mr. COLLINS. I think the President of the Convention should appoint a committee to forward the memorial to our Delegate and members of Congress.

The PRESIDENT. The Secretary might be instructed to forward copies of the resolution and memorial to them.

Mr. COLLINS. I will make that motion—that the Secretary furnish a copy of the resolution and memorial to our Delegate, and also to each of our Senators and Representative in Congress, in the event of the adoption of the Constitution.

The question was taken, and the motion was agreed to.

ENROLLMENT.

Mr. HAWLEY. I desire to make an additional report from the Committee on Enrollment. The report merely specifies certain changes suggested by the Committee as necessary to be made in various articles as enrolled, and in order to save time, I suggest that the reading be dispensed with, and the amendments can be acted upon when they are reached in their order on the final revision. I will state further, that some changes appear to be necessary in the article on Judicial Department, and the committee wish for further time on that article.

The PRESIDENT. If there is no objection, further time will be granted, and the report will take the same course as the one previously made; that is, the amendments will be considered when the sections are read on their final revision.

FINAL REVISION—LEGISLATIVE DEPARTMENT.

The Convention resumed the final reading and revision of the Constitution, beginning with Section 32 of Article IV, entitled Legislative Department, which was under consideration at the time of the recess at noon.

The SECRETARY again read Section 32, as follows:

SEC. 32. The Legislature shall provide for the election by the people of a Clerk of the Supreme Court, County Clerks, County Recorders, who shall be ex officio County Auditors, District Attorneys, Sheriffs, County Surveyors, Public Administrators, and other necessary officers, and fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of Record in and for their respective counties.

Mr. KIMBALL. There was a motion pending at the time of the recess, which was to add after "Courts of Record," the words "and of the Boards of County Commissioners."

Mr. BANKS. I do not see the necessity for that. There does not appear now to be anything prohibiting the Boards of County Commissioners from electing their own Clerks, and if the Legislature shall think proper to pass a law giving them the right to elect clerks, I do not see why they could not elect a Deputy, or even the County Clerk himself. I hope, therefore, the section will be left as it is, and shall vote against the amendment.

Mr. COLLINS. In Storey County this system works admirably. It is important that all the duties of this nature should be brought, as far as possible, within the range of the duties and responsibilities of the county officers regularly elected, and if we adopt a general provision that the County Clerk shall be made ex officio Clerk of the Board of Supervisors, there is no escape from the requirement, and we thus save a good deal of legislation, and probably much bickering in the future.

Mr. DeLONG. The gentleman from Humboldt, (Mr. Banks,) has taken two or three different tacks in opposing this small matter. He says in the first place that, being the County Clerk, it necessarily follows, by implication, that he must be Clerk of the Board of Supervisors.

Mr. BANKS. The gentleman is entirely mistaken; that was the position taken by another gentleman. I only say in my judgment it would be wise, as a general rule, for the County Commissioners to select the County Clerk, or one of his deputies, as Clerk of their Board.

Mr. DeLONG. Then if it is wise for the County Clerk to be Clerk of the Board of County Commissioners, it is wise for us to make him such.

Mr. BANKS. It is not necessary to provide for it in the Constitution.

Mr. DeLONG. Very well; then you would have to create a new office, independent of that of the County Clerk; for a man holding any other office could not be required to perform the service, and no one could afford to do it at so cheap a rate as the County Clerk, who has the other clerical duties of the county to perform.

Mr. BANKS. If there is a majority in favor of the amendment, I will waive my objection.

The question was taken on the amendment offered by Mr. Collins, to insert after "Courts of Record," the words, "and of the Boards of County Commissioners," and Mr. Banks alone voted no.

Mr. BANKS. I will waive my objection.

The amendment was then unanimously agreed to.

Sections 33 and 34 were read, as follows:

SEC. 33. The members of the Legislature shall receive for their services a compensation to be fixed by law and paid out of the public treasury, but no increase of such compensation shall take effect during the term

the which the members of which House shall have been elected; provided, that any such vacancy may be filled by the consent of such senate, expressed in the resolutions of the Legislature, by the concurrent vote of a majority of every joint convention of the Legislature, by the concurrent vote of a majority of every joint convention, to such senator; and provided, further, that the Speaker of the Assembly, and Lieutenant-Governor, or President of the Senate, shall count, during the time of their actual incumbency as such presiding officers, receive an additional allowance of two dollars per diem.

Sec. 6. In all elections for United States Senator, each member shall vote in joint convention of both houses of the Legislature. It shall be the duty of the Legislature which convenes next preceding the expiration of the term of each Senator, to elect his successor. If a vacancy in such Senatorial representation from any cause occur, it shall be the duty of the Legislature then in session, or of the succeeding session thereof, to supply such vacancy. If the Legislature shall at any time, as herein provided, fail to unite in a joint convention within twenty days after the commencement of the session of the Legislature for the election of such Senator, it shall be the duty of the Governor, by proclamation, to convene the two houses of the Legislature in joint convention, within not less than five days nor exceeding ten days from the publication of his proclamation, and the joint convention, when so assembled, shall proceed to elect the Senator as herein provided.

Mr. BANKS. I suggest that we change that word "occurs," to "occur," in the section last read, so as to read: "If a vacancy in such senatorial representation from any cause occur, it shall be the duty," and so on. Being in the subjunctive mood it should take the singular form.

The PRESIDENT. If there is no objection, the Secretary will make that verbal correction, by erasing the letter s.

Section 25 was read, as follows:

Sec. 25. Every bill which may have passed the Legislature, shall, before it become a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter such objections upon the journal, and proceed to reconsider it. If after such reconsideration, it again pass both houses by ayes and noes, by a vote of two-thirds of the members elected to each House, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within five days after it has been presented, (Sunday excepted,) to the Governor, by the House in which it originated, it shall be a law, in like manner as if it had signed it, unless the Legislature, by its final adjournment, prevent such return, in which case it shall be a law, unless the Governor, within five days next after the adjournment, (Sundays excepted,) shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the Legislature at its next session, in like manner as if it had been returned by the Governor; and if the same shall receive the vote of two-thirds of the members elected to each branch of the Legislature, upon a vote taken by ayes and noes, to be entered upon the journals of each House, it shall become a law.

Mr. BANKS. The words "ayes and noes" occur twice in this section; they should be changed to "yeas and nays."

The PRESIDENT. I think it is correct to say "ayes and noes."

Mr. COLLINS. That correction has been made heretofore.

The PRESIDENT. The words "ayes and noes" were used in the old Constitution, all through.

Mr. KINKEAD. Had the gentleman from Storey, (Mr. DeLong,) this forenoon objected that the language did not read well, where it said the ayes and noes of each member should be entered upon the journal. I will move to make the change.

Mr. COLLINS. Is it necessary to blot up these sheets for the sake of making so slight an alteration?

The PRESIDENT. I like the phraseology better; if there is no objection, the amendment will be made.

Mr. LOCKWOOD. Unless somebody will give a good reason for the change, I rather feel disposed to object. It is certainly fully as proper to use the words "ayes and noes," and I believe those are the words laid down by parliamentarians.

Mr. COLLINS. I think it is merely a matter of choice; sometimes they say "ayes and noes," and sometimes "yeas and nays."

Mr. BANKS. When the word "aye" is used, "no" should be coupled with it. It would be a mongrel sort of way to say "ayes and nays," or "yeas and noes." But inasmuch as we have made the change heretofore, I hope, for the sake of uniformity, it will be done in this instance.

Mr. BROSNAN. I see the term used in a manual here is "ayes and noes."

Mr. DeLONG. No doubt they are synonymous terms.

Mr. COLLINS. We have scriptural authority for the change: "Let your communication be yea, yea, and nay, nay." [Merriment.]

Mr. BANKS. I suppose there is no difference in the meaning, as the terms are generally used and understood. We may adopt whichever form we choose, but that which we begin with we should carry through the whole instrument.

Mr. COLLINS. The term "yeas and nays" is used in the California Constitution. In the Legislature of that State the "yeas and nays" are required to be taken at the desire of any three members present.

The PRESIDENT. Is there any objection to the proposed alteration?

Mr. COLLINS. I believe it was a personal matter with the President pro tem. this morning. He objected to having his nose go on the record. [Laughter.]

Mr. DeLONG. The same alteration was made in several instances this morning—as long as I was in the chair.

The PRESIDENT. I think we had better make the change, then, to preserve the uniformity of the instrument.

Mr. LOCKWOOD. I withdraw my objection.

Mr. MURDOCK. My father belonged to the Society of Friends, and as I was taught "yea" and "nay" from my infancy, I prefer it.

The amendment to strike out "ayes and noes," and insert instead "yeas and nays," was agreed to by unanimous consent.

Mr. KINKEAD. I have an amendment to

office. In the first part of the section it now reads: "If he approve it, he shall sign it, but if not, he shall return it, with his objections, to the House in which it originated, which shall enter such objections upon the journal and proceed to reconsider it."

Mr. DeLONG. It should be "which House shall cause such objections to be entered."

Mr. KINKEAD. I move to amend that language so as to read: "which House shall cause such objections to be entered upon its journal."

The amendment was agreed to by unanimous consent.

Mr. BANKS. In the first sentence it says: "shall, before it becomes a law." I wish the gentleman from Storey (Mr. Brosnan) would look at that. It appears to me that the word "become," would be preferable to "becomes." I suggest that we strike off the s, so that it will read "Every bill which may have passed the Legislature, shall, before it become a law, be presented to the Governor," etc.

Mr. PROCTOR. I object. That may be grammatical, but it does not seem so to me.

Mr. BROSNAN. If we make that change, I think it will be necessary to use the word "shall" again. In my judgment, it is right now.

Mr. BANKS. I do not think so, but I will withdraw the amendment.

ENROLLMENT—AGAIN.

Mr. HAWLEY. I have a final report to make from the Committee on Enrollment. The committee recommend certain erasures and amendments in Article VI, entitled Judicial Department, to which attention will be called as each section is read on the final revision; and the committee ask to be discharged from further service, as that finishes our labors, so far as we are advised.

Mr. BANKS. I hope the committee will not be discharged. Its duties will only expire when the Convention adjourns finally, as it is one of the standing committees. It may possibly have some other work yet.

The question was taken on discharging the committee, and it was not agreed to.

The PRESIDENT. If there is no objection, the report, instead of being read now, will take the same course as those previously made.

EXECUTIVE DEPARTMENT.

The Convention took up, on its final reading and revision, Article V, entitled Executive Department.

The SECRETARY read Sections 1 to 4, inclusive, as follows:

SECTION 1. The supreme Executive power of this State shall be vested in a Chief Magistrate, who shall be Governor of the State of Nevada.

SEC. 2. The Governor shall be elected by the qualified electors at the time and place of voting for members of the Legislature, and shall hold his office for four years from the time of his installation, and until his successor shall be qualified.

SEC. 3. No person shall be eligible to the office of Governor who is not a qualified elector, and who, at the time of such election, has not attained the age of twenty-five years; and who, except at the first election under this Constitution, shall not have been a citizen resident of this State for two years next preceding that election.

SEC. 4. The returns of every election for Governor, and other State officers voted for at the general election, shall be sealed up and transmitted to the seat of Government, directed to the Secretary of State, and on the third Monday of December succeeding such election, the Chief Justice of the Supreme Court and the Associate Justices, shall meet at the office of the Secretary of State and open and examine the election returns for Governor and all other State officers, and forthwith declare the result and publish the names of the candidates elected. The persons having the highest number of votes for the respective offices shall be declared elected, but in case any two or more have an equal, and the highest number of votes for the same office, the Legislature shall by joint vote of both Houses, elect one of said persons to fill said office.

Mr. CHAPIN. Would it not read a little better, in Section 4, to say—"and publish the names of the persons elected," instead of "candidates" elected? I move to substitute the word "persons" for "candidates."

Mr. DeLONG. It makes no difference, I think; it is merely a question of taste.

The amendment was adopted by unanimous consent.

The PRESIDENT. My colleague (Mr. Kinkead) has pointed out another difficulty in the same section, namely, that it would require the presence of each one of the three Supreme Court Judges, or in the event of an increase such as has been authorized, the presence of all the five Judges of the Supreme Court, on the day specified, to render the canvass valid. I suggest whether it would not be better to give the power of canvassing to a majority, as there might, very likely, be circumstances preventing the entire number of Judges from being in attendance.

Mr. KINKEAD. I only ask if the section would not have that effect, or if it would not be so construed?

The PRESIDENT. It is clear, in my opinion, that such is the proper construction.

Mr. KINKEAD. Then I move to amend the section by inserting, after "Associate Justices," the words "or a majority thereof."

The amendment was adopted by unanimous consent.

Sections 5 to 9, inclusive, were read, as follows:

SEC. 5. The Governor shall be Commander-in-Chief of the military forces of this State, except when they shall be called into the service of the United States.

SEC. 6. He shall transact all executive business with the officers of the Government, civil and military, and may require information in writing from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

SEC. 7. He shall see that the laws are faithfully executed.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission, which shall expire at the next election and qualification of the person elected to such office.

SEC. 9. The Governor may, on extraordinary occa-

shall convene the Legislature by proclamation, and shall state to both Houses, when assembled, the purpose for which they have been convened, and the Legislature shall transact no legislative business except that for which they were especially convened, or such other legislation as the Governor may call to the attention of the Legislature while in session.

Mr. COLLINS. In the second line of Section 9, the word "a" before "proclamation," I suggest, is superfluous. I will move that it be stricken out, so as to read: "The Governor may, on extraordinary occasions, convene the Legislature by proclamation."

The amendment was agreed to by unanimous consent.

Sections 10 to 13, inclusive, were read, as follows:

Sec. 10. He shall commercialize, by message, to the Legislature, at every regular session, the condition of the State, and recommend such measures as he may deem expedient.

Sec. 11. In case of a disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; provided, it be not beyond the time fixed for the meeting of the next Legislature.

Sec. 12. No person shall, while holding any office under the United States Government, hold the office of Governor, except as herein expressly provided.

Sec. 13. The Governor shall have the power to remit and collection of fines and forfeitures, and grant reprieves for a period not exceeding sixty days in each case, after conviction, for all offenses, except in cases of impeachment. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. And if the Legislature should fail or refuse to make final disposition of such case, the sentence shall be enforced as such time and place as the Governor by his order may direct. The Governor shall communicate to the Legislature, at the beginning of every session, every case of fine or forfeiture remitted, or reprieve, pardon, or commutation granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, and the date of the remission, commutation, pardon, or reprieve.

Mr. COLLINS. I suggest whether, in the third line from the bottom of Section 13, the word "for" would not read better than "of." Then it would read, "the crime *for* which he was convicted."

Mr. BANKS. It seems to me we changed that once.

The PRESIDENT. I think the word "of" is right. A man is convicted *for* killing somebody, for instance, but that constitutes the crime *of* murder.

Mr. COLLINS. Very well.

Sections 14 to 16, inclusive, were read, as follows:

Sec. 14. The Governor, Justices of the Supreme Court, and Attorney-General, or a majority part of them, of whom the Governor shall be one, may, upon such conditions as they may think proper, remit fines and forfeitures, commute punishments, and grant pardons after conviction, in all cases except treason and impeachments, subject to such regulations as may be provided by law, relative to the manner of applying for pardons.

Sec. 15. There shall be a seal of this State, which shall be kept by the Governor and used by him officially, and shall be called "the Great Seal of the State of Nevada."

Sec. 16. All grants and commissions shall be in the name and by the authority of the State of Nevada, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Sec. 17. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner as the Governor, and his term of office, and his eligibility, shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of the office, or be absent from the State, the President pro tempore of the Senate shall act as Governor, until the vacancy be filled, or the disability cease.

Sec. 18. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, and at the head of any military force thereof, he shall continue Commander-in-Chief of the military force of the State.

Sec. 19. A Secretary of State, a Treasurer, a Controller, a Surveyor-General, and an Attorney-General, shall be elected at the time and places, and in the same manner as the Governor. The term of office of each shall be the same as is prescribed for the Governor. Any elector shall be eligible to either of said offices.

Mr. BANKS. In some of the engrossed copies we find that word "controller" spelled "*comptroller*." That is an error not likely to be detected from the reading, but I hope the Secretary will see that it is corrected.

Mr. HAWLEY. The Enrolling Clerk will correct it.

Sections 20 and 21 were read, as follows:

Sec. 20. The Secretary of State shall keep a true record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature.

Sec. 21. The Governor, Secretary of State, and Attorney General, shall constitute a Board of State Prison Commissioners, which Board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall also constitute a "Board of Examiners," with power to examine all claims against the State, (except salaries or compensation of officers fixed by law,) and perform such other duties as may be prescribed by law. And no claim against the State, (except salaries or compensation of officers fixed by law,) shall be passed upon by the Legislature without having been considered and acted upon by said "Board of Examiners."

Mr. BANKS. I observe that the words "Board of Examiners" are placed within quotation marks. I do not see any propriety in that, and I move to strike out the quotation marks.

The PRESIDENT. If there is no objection, the Secretary will make the correction.

Section 22 was read, as follows:

Sec. 22. The Secretary of State, State Treasurer, State Controller, Surveyor-General, Attorney-General, and Superintendent of Public Instruction, shall perform such other duties as may be prescribed by law.

Mr. COLLINS. What is the value of that word "State," before "Treasurer" and "Controller?" I am not able to see the use of it, although I believe the word is used elsewhere in the same connection.

Mr. McCLINTON. It is the customary form.

The Controller signs as "Controller of State," or "State Controller."

Mr. BANKS. I suppose the designation serves to distinguish them from the county officers of the same name.

Mr. COLLINS. Then, why not say "Superintendent of Public Instruction of the State of Nevada," in order to distinguish that officer from County Superintendents? It occurs to me that it is just as necessary. I will offer no amendment, however.

JUDICIAL DEPARTMENT.

The Convention took up, on its final reading and revision Article VI, entitled Judicial Department.

Mr. KINKEAD. This article has heretofore been headed "Judicial Department," but as enrolled it is headed "Judiciary." I move to amend, by striking out "Judiciary" and inserting "Judicial Department," as the title of the article.

By unanimous consent the amendment was agreed to, and the Secretary was instructed to make the alteration.

The PRESIDENT. Probably it will be the better way to read the report of the Committee on Enrollment on this article, before proceeding with the reading of the article itself. That will call the attention of members to the amendments which are necessary to be made. If there is no objection, the Secretary will read the report.

The SECRETARY read the report, as follows:

To the President of the Constitutional Convention:

The Committee on Enrollment beg leave, respectfully, to report that they have examined Article VI, of the Constitution, and report the same as enrolled, but recommend the following amendments, to wit:

1. To substitute the words "Judicial Department," for "Judiciary," as title for Article VI.

2. To insert the word "additional," between the words "jury" and "consisting," in the third line of Section 3, Article VI.

3. To strike out the words "on questions of law alone," where they occur in the fifth line of Section 4, Article VI.

4. To insert the word "to," between the words "proceeding" and "it," in the second line of Section 6, Article VI.

5. To insert the word "such," between the words "as" and "change," in the tenth line of Section 6, Article VI.

6. To insert the word "to," between the words "pursuance" and "or," in the third line of Section 8, Article VI.

7. To insert the word "shall," between the words "also" and "have," in the twelfth line of Section 8, Article VI.

8. To insert the word "powers" between the words "their" and "duties," and the words "and responsibilities," between the words "duties" and "provided," in the second line of Section 9, Article VI.

9. To strike out the letter "s," where it occurs in the first line of Section 10, Article VI, and to add the letter "s," to the words "Justice" and "Recorder," in the same line.

Your committee would respectfully recommend the adoption of Article VI, as proposed to be amended, and ask to be discharged from further duty.

All of which is respectfully submitted.

A. T. HAWLEY, Chairman.

[Mr. BACKMAN in the chair.]

The PRESIDENT *pro tem.* I suggest that it would be better to act upon each of these amendments separately, as there is a large number of them of a merely verbal character.

Mr. CHAPIN. Let the chairman of the Enrolling Committee take the report and move the amendments as each section is read.

Mr. KINKEAD. I would further remark that these errors arose for the most part in consequence of the Enrolling Clerk having been furnished with an incorrect copy of the article as passed.

Mr. HAWLEY. I will take the report, and as each section is read will offer the amendments recommended by the committee.

LEAVE OF ABSENCE.

Mr. WARWICK. In consequence of pressing business, which calls me to California immediately, I desire to be excused from further attendance on the Convention.

Mr. CHAPIN. I beg the gentleman not to leave us; we shall find ourselves without a quorum.

Mr. WARWICK. It is business of such a character that great pecuniary loss is involved if not attended to. I would not ask it if it were not a matter of great importance to me.

The question was taken, and leave of absence was granted to Mr. Warwick, in accordance with his request.

JUDICIAL DEPARTMENT—AGAIN.

[Mr. COLLINS in the chair.]

The Convention proceeded with the final reading and revision of Article VI, entitled Judicial Department.

The SECRETARY read Section 1, as follows:

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, District Courts, and in Justices of the Peace. The Legislature may also establish Courts, for municipal purposes only, in incorporated cities and towns.

Mr. BANKS. I would like to know how the word "only" happened to get in there? I suggest that the word "alone" would be better than "only." It looks very awkward in the printed copy.

Mr. PROCTOR. It is intended to authorize such courts, "only" in incorporated cities and towns. It is to prevent their establishment in the rural districts.

Mr. KINKEAD. That is the idea—"for municipal purposes only."

Mr. PROCTOR. That is the way it reads.

Mr. BANKS. I will not make a motion, provided a good large comma is written after the word "only."

CALL OF THE HOUSE.

Mr. DeLONG. I move a call of the House. We have now but just twenty members present, and I have some important business which calls me out. There are several members in town who do not attend, and I think it

is rather rough to require some of us to stay here and work all the time, while others are allowed to go about their business.

The question was taken, and the motion was agreed to.

The roll was called, and the following members responded to their names: Messrs. Banks, Belden, Brenham, Chapin, Collins, Crawford, Crosman, DeLong, Fenton, Gibson, Hawley, Kinkead, Lockwood, Mason, McClinton, Murdock, Parker, Proctor, Turnbaugh, Wetherill, and Mr. President. Present, 21; absent 18.

The Sergeant-at-Arms was directed to arrest and bring in the absentees.

Mr. PARKER stated that his colleague, Mr. Kennedy, was unwell, and Mr. Kennedy was thereupon excused.

Mr. CHAPIN. It is stated that there are none of the absent members in town, other than those who have leave, or are sick, except the gentleman from Washoe, (Mr. Nourse,) and as we have now more than a quorum, I move that further proceedings under the call be dispensed with, so that we can proceed with the reading. The Sergeant-at-Arms can doubtless bring in the absent members at any time.

The question was taken, and the motion was agreed to.

JUDICIAL DEPARTMENT—AGAIN.

The Convention resumed the final reading and revision of Article VI, entitled Judicial Department.

Section 2 was read, as follows:

SEC. 2. The Supreme Court shall consist of a Chief Justice and two associate Justices, a majority of whom shall constitute a quorum; *provided*, that the Legislature, hereof, may provide for the election of two associate Justices, and if so increased, three shall constitute a quorum. The concurrence of a majority of the whole Court shall be necessary to render a decision.

Mr. HAWLEY. The Committee on Enrollment recommend the insertion of the word "additional," so as to read, "may provide for the election of two additional Associate Justices." It is an accidental omission in the enrollment.

The amendment was agreed to by unanimous consent.

Section 3 was read, as follows:

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at the general election, as provided by law, and shall hold office for the term of six years from and including the first Monday of January next succeeding their election; *provided*, that there shall be elected at the first election under this Constitution, three Justices of the Supreme Court, who shall hold office from and including the first Monday of December, A. D. 1864, and continue in office respectively two, four, and six years respectively, from the first Monday of January next succeeding their election. They shall meet as soon as practicable after their election and qualification, and, at their first session, they shall classify themselves, and determine by lot the term of office each shall fill, and the Justice drawing the shortest term shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the senior Justice in commission shall be Chief Justice. And in case the commission of any two or more of said Justices shall bear the same date, they shall determine by lot who shall be Chief Justice.

[Mr. BROMLEY in the chair.]

Mr. JOHNSON. What is the necessity of those words in the first clause—"as provided by law?" We elsewhere require that the general election shall be provided for by law, and I ask if those words—"as provided by law"—have any pertinency whatever in this connection?

The PRESIDENT *pro tem.* I think it is very clear that they are not necessary.

Mr. JOHNSON. They appear to be entirely superfluous. I move to amend the section by striking out the words "as provided by law."

The amendment was adopted by unanimous consent.

The Sergeant-at-arms reported that Mr. Nourse was present, and,

On motion of Mr. CHAPIN, he was admitted and took his seat.

Mr. KINKEAD. I suggest that the words, "classify themselves," in this section, are unnecessary. If the Justices determine their respective terms of office by lot, I imagine that will be sufficient classification.

Mr. JOHNSON. If my colleague will offer an amendment to strike out those words, I will second it.

Mr. KINKEAD. I move to strike out the words "classify themselves, and."

The amendment was adopted by unanimous consent.

Section 4 was read, as follows:

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also, in all cases at law in which is involved the title, or right of possession, or the possession of real estate or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, (exclusive of interest,) or the value of the property in controversy, exceeds three hundred dollars; also, in all other civil cases not included in the general subdivisions of law and equity, and also, on questions of law alone, in all criminal cases in which the offense charged amounts to a felony, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by, or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any District Court in the State, or before any Judge of said Courts.

Mr. KINKEAD. The word "to" is left out of the enrolled copy, between the words "possession" and "or," in the second line. The Enrolling Committee recommend that the word "to" be inserted there in the enrolled copy.

The amendment was agreed to by unanimous consent.

Mr. HAWLEY. The committee also recommend the striking out of the words "on questions of law alone," where they occur in the fifth line, as enrolled.

The PRESIDENT *pro tem.* On the third read-

ing of the article, the Convention merely transposed the sentences, so that those words would come in after "and also."

Mr. HAWLEY. I move to make that amendment, so that the sentence will read: "And also, on questions of law alone, in all criminal cases in which the offense charged amounts to felony."

The amendment was agreed to by unanimous consent.

[The PRESIDENT in the chair.]

Mr. NOURSE. Is it necessary, I will inquire, to adopt any provision specifying that there shall be no jury trials in the Supreme Court?

Mr. BROSNAN. I do not think it is necessary, because the Court has only appellate jurisdiction.

The PRESIDENT. I do not think it is necessary. I had made inquiry concerning the same matter.

Section 5 was read, as follows:

SEC. 5. The State is hereby divided into nine Judicial Districts, of which the County of Storey shall constitute the first; the County of Ormsby the second; the County of Lyon the third; the County of Washoe the fourth; the Counties of Nye and Churchill the fifth; the County of Humboldt the sixth; the County of Lander the seventh; the County of Douglas the eighth; and the County of Esmeralda the ninth. The County of Roop shall be attached to the County of Washoe for judicial purposes, until as otherwise provided by law. The Legislature may, however, provide by law for an alteration in the boundaries or divisions of the districts herein prescribed, and also, for increasing or diminishing the number of the Judicial Districts and judges therein; but no change shall take effect except in case of a vacancy, or the expiration of the term of an incumbent of the office. At the first general election under the Constitution, there shall be elected in each of the respective districts, (except as in this section hereafter otherwise provided,) one District Judge, who shall hold office from and including the first Monday of December, A. D. eighteen hundred and sixty-four, and until the first Monday of January, in the year one thousand eight hundred and sixty-seven; after the said first election, there shall be elected at the general election which immediately precedes the expiration of the term of his predecessor, one District Judge in each of the respective Judicial Districts, (except in the first district, as in this section hereinafter provided.) The District Judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of four years (excepting those elected at said first election) from and including the first Monday of January next succeeding their election and qualification; *provided*, that the first Judicial District shall be entitled to, and shall have three District Judges, who shall possess co-extensive and concurrent jurisdiction, and who shall be elected at the same times, in the same manner, and shall hold office for the like terms, as herein prescribed in relation to the Judges in other Judicial Districts. Any one of said Judges may preside on the empanneling of Grand Juries, and the presentment and trial on indictments, under such rules and regulations as may be prescribed by law.

Mr. NOURSE. As I understood the Secretary to read it, the County of Roop is to be attached to the County of Washoe, "until as otherwise provided by law." I move to strike out the word "as."

The amendment was agreed to by unanimous consent.

Mr. HAWLEY. The Enrolling Committee recommend that the word "such," be inserted between "no" and "change," in the ninth line, as enrolled.

The amendment was agreed to by unanimous consent.

Section 6 was read, as follows:

SEC. 6. The District Courts in the several Judicial Districts of this State, shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title, or the right of possession, or the possession of real property, or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, (exclusive of interest,) or the value of the property in controversy, exceeds three hundred dollars; also, in all cases relating to the estates of deceased persons, and the persons and estates of minors and insane persons, and of the action of forcible entry and unlawful detainer, and also, in all criminal cases not otherwise provided for by law. They shall also have final appellate jurisdiction in cases arising in Justices' Courts, and such other inferior tribunals as the Legislature may provide. The District Courts and their judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs proper and necessary to the complete exercise of their jurisdiction; and also, shall have power to issue writs of habeas corpus, on petition by &c on behalf of any person held in actual custody in their respective districts.

Mr. HAWLEY. The committee recommend the insertion of the word "to," between "possession" and "or," in the third line, so as to read "or the right of possession to, or the possession of real property," etc.

Mr. BANKS. Would not the same meaning be better obtained by saying "possessory right to?"

Mr. KINKEAD. We have used this same phrase once before.

The PRESIDENT. My remembrance is that discussion was had upon it, and that the Chairman of the Judiciary Committee suggested the words then adopted, as the proper phraseology.

Mr. BROSNAN. "The right of possession to" is a legal phrase, and well understood by every lawyer. It is correct in the engrossed article. It should read: "Which involve the title, or the right of possession to, or the possession of real property, or mining claims," etc.

The amendment was adopted by unanimous consent.

The PRESIDENT. In the latter part of the section the language is, "and such other inferior tribunals as the Legislature may provide." In my opinion the intention is not properly expressed, and I wish to call the attention of the Chairman of the Judiciary Committee to it. The words, "as prescribed by law," I think would be preferable.

Mr. BROSNAN. I will move as an amendment, to strike out the words, "the Legislature may provide," and insert in lieu thereof the words, "may be established by law."

The amendment was adopted by unanimous consent.

Mr. HAWLEY. The Enrolling Committee recommend to insert the word "shall," between "also" and "have," in the last clause, so tha

it will read: "And also shall have power to issue writs of habeas corpus," etc. It is right in the engrossed copy.

The amendment was adopted by unanimous consent.

Mr. McCLINTON. I think it would have read better to put "shall" before the word "also."

Mr. BROSNAN. I move a further amendment in this section, Mr. President. It now reads: "The District Courts, and their Judges, shall have power to issue writs," etc. I move to strike out the words, "their Judges," and insert instead, "the Judges thereof," so as to read: "The District Courts, and the Judges thereof, shall have power," etc.

The amendment was adopted by unanimous consent.

Section 7 was read, as follows:

SEC. 7. The times of holding the Supreme Court, and District Courts, shall be as fixed by law. The terms of the Supreme Court shall be held at the seat of Government, and the terms of the District Courts shall be held at the county seats of their respective counties: *Provided*, that in case any county shall be hereafter divided into two or more districts, the Legislature may by law designate the places of holding such courts.

Mr. NOURSE. Would it not read better to say, "holding Courts in such Districts?" I do not care for it particularly, but I will make a motion to amend the last sentence so as to read in that manner.

Mr. BANKS. I do not see the reason for the amendment. Read it again.

The SECRETARY. It will then read: "The Legislature may by law designate the places of holding Courts in such Districts."

Mr. BANKS. Very well.

The amendment was agreed to by unanimous consent.

Section 8 was read, as follows:

SEC. 8. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and shall fix by law their duties; *provided*, that such Justices' Courts shall not have jurisdiction of the following cases, viz.: First—Of cases in which the matter in dispute is a money demand or personal property, and the amount of the demand, (exclusive of interest,) or the value of the property, exceeds three hundred dollars. Second—Of cases wherein the title to real estate or mining claims, or questions of boundaries to land, is or may be involved; or of cases that in any manner shall conflict with the jurisdiction of the several Courts of Record in this State. *And provided further*, that Justices' Courts shall have such criminal jurisdiction as may be prescribed by law. And the Legislature may confer upon said courts jurisdiction concurrent with the District Courts of actions to enforce mechanics' liens, wherein the amount (exclusive of interest) does not exceed three hundred dollars; and also of actions for the possession of lands and tenements, where the relation of landlord and tenant exists, or when such possession has been unlawfully or fraudulently obtained or withheld. The Legislature shall also prescribe the manner, and determine the cases in which appeals may be taken from Justices' and other courts. The Supreme Court, the District Courts, and such other courts as the Legislature shall designate, shall be Courts of Record.

Mr. KINKEAD. The last part of the section reads: "The Legislature shall also prescribe the manner, and determine the cases, in which appeals may be taken," etc. I move to insert the words "by law," so as to read: "The Legislature shall also prescribe by law the manner," etc.

The amendment was agreed to by unanimous consent.

Sections 9 and 10 were read, as follows:

SEC. 9. Provision shall be made by law prescribing the powers, duties, and responsibilities of any Municipal Court that may be established in pursuance of Section 1 of this article, and also fixing by law the jurisdiction of said court, so as not to conflict with that of the several Courts of Record.

SEC. 10. No judicial officer, except a Justice of the Peace and City Recorder, shall receive to his own use any fees or perquisites of office.

Mr. HAWLEY. The Committee on Enrollment thought it necessary to amend Section 10, by striking out the word "a," and inserting the letter *s* after "Justice" and "Recorder," so as to read: "No judicial officer, except Justices of the Peace and City Recorders, shall receive," etc.

The PRESIDENT. It appears to be correct as it now reads.

Mr. PROCTOR. As it is near the time for the recess under the rules, I move to extend the time for fifteen minutes.

Mr. HAWLEY. I move to amend so as to extend the time one hour.

Mr. PARKER. We shall have to hold an evening session anyhow.

The PRESIDENT. The question is on extending the time for the recess until six o'clock.

The question was taken, and, on a division, the motion was agreed to—ayes, 10; noes, 8.

The question was taken on the amendment recommended by the Committee on Enrollment, in Section 10, and it was agreed to by unanimous consent.

Sections 11 to 15, inclusive, were read, as follows:

SEC. 11. The Justices of the Supreme Court, and the District Judges, shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected, and all elections or appointments of any such judges by the people, Legislature, or otherwise, during said period, to any office other than judicial, shall be void.

SEC. 12. Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law.

SEC. 13. The style of all process shall be, "The State of Nevada," and all prosecutions shall be conducted in the name and by the authority of the same.

SEC. 14. There shall be but one form of civil action, and law and equity may be administered in the same action.

SEC. 15. The Justices of the Supreme Court, and District Judges shall each receive, quarterly, for their services, a compensation to be fixed by law, and which shall not be increased or diminished during the term for which they shall have been elected, unless in case a vacancy occurs, in which case the successor of the former incumbent shall only receive such salary as may be provided by law at the time of his election or appointment. And provision shall be made by law for setting apart from each year's revenue a sufficient amount of money to pay such compensation. *Provided*, that District Judges shall be paid out of the county treasuries of the counties composing their respective districts.

The PRESIDENT. The section last read provides that the salary shall not be increased or diminished during the term for which a judge shall have been elected; but it does not apply, as I understand it, to the successor of a judge who may vacate the office prior to the expiration of his term; it only prohibits an increase or diminution of the salary of his predecessor in office. The Legislature may have fixed the salary either more or less at any time preceding the vacancy, and the change will only take effect upon the occurrence of such vacancy. When the incumbent goes out of office, the reduced or increased salary, as it may be, applies to his successor.

Mr. BROSNAN. My colleague (Mr. DeLong) offered an amendment to this section, which was adopted, embracing the idea that the salary of a judge may be lessened or increased, to take effect after his election or appointment to fill a vacancy for an unexpired term. Will the Secretary read it again?

The SECRETARY again read Section 15.

The PRESIDENT. I am content with it.

Mr. BANKS. I move that where the words "only receive," occur, those words be transposed so as to read, "shall receive only such salary," etc.

The amendment was agreed to by unanimous consent.

Mr. BANKS. It says, "unless a vacancy occurs;" I move to strike out the letter *s* from "occurs," so as to read, "unless a vacancy occur."

Mr. TAGLIABUE. I object.

Mr. HAWLEY. It would be proper to insert the word "may" or "shall" before the word "occur."

Mr. BANKS. It is not necessary; the word "shall" is understood there.

Mr. HAWLEY. Then it is not necessary to make any change.

Mr. BANKS. If there is any objection, let "occurs" go, but it is not used in that connection by any good writer.

The PRESIDENT. The gentleman from Nye (Mr. Tagliabue) has called the attention of the Chair to the fact that no provision has been made fixing the salaries of the District Judges who are first to be elected.

Mr. TAGLIABUE. And as their compensation cannot be increased or diminished during their term of office, it seems to me they would be in rather a bad fix.

Mr. BROSNAN. That matter was brought up in the Schedule Committee, and I understood from the gentleman from Lyon, (Mr. Kennedy,) who, I regret, is not now in his seat, that the committee had determined upon the amount of Judges' salaries. He told me they would be provided for in the Schedule.

Mr. KINKEAD. We have made an alteration in the section, so as to provide that the compensation shall be fixed "by law." I think there will be no difficulty about that.

The PRESIDENT. If there be no objection, we will pass the pending question for the present. It can come up when the Schedule is reached.

Section 16 was read, as follows:

SEC. 16. The Legislature, at its first session, and from time to time thereafter, shall provide by law that upon the institution of each civil action, and other proceedings, and also upon the perfecting of an appeal in any civil action or proceeding in the several courts of Record in this State, a special court fee or tax, which shall be advanced to the clerks of said courts respectively, by the party or parties bringing such action or proceeding, or taking such appeal; and the money so paid in shall be accounted for by such clerks, and applied towards the payment of the compensation of the judges of said courts, as shall be directed by law.

Mr. KINKEAD. The word "for" seems to be necessary, so as to require the Legislature to provide *for* a special tax.

The PRESIDENT. I suggest that it be made to read "provide for the payment of," etc.

Mr. COLLINS. The language now is, "shall be advanced."

The PRESIDENT. If we strike out the word "which," after "tax," it will leave the section as it should be.

Mr. KINKEAD. I will move that amendment.

The amendment was agreed to by unanimous consent.

Mr. HAWLEY. The Committee on Enrollment recommend the insertion of certain words which have been omitted in the first clause, so that it will read: "And shall fix by law their powers, duties and responsibilities."

The amendment was agreed to by unanimous consent.

Sections 17 and 18 were read, as follows:

SEC. 17. The Legislature shall have no power to grant leave of absence to a judicial officer; and any such officer who shall absent himself from the State for more than ninety consecutive days, shall be deemed to have vacated his office.

SEC. 18. No judicial officer shall be superseded, nor shall the organization of the several courts of the Territory of Nevada be changed, until the election and qualification of the several officers provided for in this article.

No amendments were proposed.

Mr. KINKEAD. As we have now finished the reading of the article, I move that the Convention take a recess till seven o'clock.

The PRESIDENT. If we take a recess, an additional hour will be consumed this evening in obtaining a quorum.

Mr. BANKS. I am opposed to working all the time, without rest, and I hope we shall take a recess now.

The question was taken, and upon a division, the motion was agreed to—ayes, 12; noes not counted.

Accordingly, at twenty minutes after five o'clock, the Convention took a recess until seven o'clock, P. M.

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EVENING SESSION.

The Convention re-assembled, and was called to order at ten minutes after seven o'clock, P. M.

On motion of Mr. BANKS, in the temporary absence of the President, Mr. DeLong took the chair as President *pro tem.*

CALL OF THE HOUSE.

On motion of Mr. PARKER, a call of the House was ordered, and the roll being called, the following members responded: Messrs. Banks, Belden, Brosnan, Chapin, Collins, Crawford, Croeman, DeLong, Folsom, Gibson, Hawley, Kennedy, Kinkead, Mason, McClinton, Parker, Proctor, Tagliabue, Wetherill, and Mr. President. Present, 20; absent, 19.

The Sergeant-at-Arms was instructed to arrest and bring in such absent members as he could find.

A quorum being present, on motion of Mr. CHAPIN, further proceedings under the call were dispensed with.

Mr. COLLINS asked indefinite leave of absence for Mr. Frizell, which was granted.

ELECTION ORDINANCE.

Mr. HAWLEY. When I made the last report from the Enrolling Committee, I was under the impression that everything had then been examined, and that it was a final report. In that I was mistaken, and I have now to report the Ordinance providing for certain elections, etc., which the committee find correctly enrolled, with the exception of a single word. The word "elections" has been used once where it should be "electors," and the committee recommend that the word "electors" be substituted.

The report was accepted, and the ordinance placed on file for final revision.

PAY OF OFFICERS AND ATTACHES.

Mr. MASON. I would like to make a suggestion in regard to the proceedings of the Convention for the first day or two, when I was not present. The pay of the officers and attaches of the Convention was then established, and I think that in some respects the rates agreed upon were unjust. I think the Secretaries, at least, are laborers worthy of their hire, and we should give them such compensation as will be worth something when they get it—if they ever do. Then, again, our Doorkeeper has a compensation of only four dollars a day, which, under all the circumstances, I consider wholly insufficient. I will, therefore, now submit a motion that the Assistant Secretary be allowed ten dollars a day, and the Doorkeeper eight dollars a day.

Mr. JOHNSON. I think it is a very proper motion in view of the restriction which we have adopted relative to expenditures, as we can readily foresee that the officers of the Convention are not likely to receive their pay short of about four years.

Mr. BROSNAN. How much does the Secretary receive under the resolution heretofore adopted?

Mr. MASON. Ten dollars a day.

Mr. BROSNAN. I submit that it is not enough. The Secretary has been facilitating the business of the Convention very much by his extremely arduous labors, and I would be inclined to say much more in the way of eulogy if he were not present.

The PRESIDENT *pro tem.* The motion is only to increase the pay of the Assistant Secretary to ten dollars per day, as the Chair understands.

Mr. PARKER. I move to amend by adding for the Secretary fifteen dollars a day.

Mr. PROCTOR. I move to add that the pay of the Seargeant-at-Arms be raised to ten dollars a day.

Mr. GIBSON. Do not forget the Porter. I move that his pay be raised from four to eight dollars a day.

Mr. MASON. I will accept the amendments proposed.

The PRESIDENT *pro tem.* The question then is on the motion as modified. The Secretary will read it.

The SECRETARY. The resolution offered by the gentleman from Esmeralda, as modified, reads as follows:

Resolved, That the salaries of the following officers of this Convention be increased as follows: Secretary from ten to fifteen dollars per day; Assistant Secretary from five to ten dollars per day; Sergeant-at-Arms from six to ten dollars per day: and Porter from four to eight dollars per day.

The question was taken, and the resolution was unanimously adopted.

Mr. JOHNSON. In view of the changes which have been made, I suggest that the pay of the Chaplains should also be increased, and for the same reasons which have induced the increase of the compensation of the other officers. It is true that their labors have been inconsiderable, merely coming here in the morning and offering up a prayer, but it will probably be some time before they will receive anything, and when they do, as the rate is now fixed—two dollars and a half per day—it will be much less than is ordinarily paid for such services. I move that the pay of the Chaplains be increased from two and a half to four dollars per day.

Mr. CHAPIN. I would like quite as well as any one to pay a good, liberal price, but we are overturning all that system of economy which we have been bragging about so long. Our boasting about the small amount of expense to be incurred by the Convention has gone forth to the people, and I declare I dislike very much to have to take it all back at the last moment. I know that the attaches have worked very hard, but at the same time the members have worked for nothing, and boarded themselves, and they also have worked hard. I do dislike the idea of increasing the bill almost one hundred per cent., at the very last moment.

The PRESIDENT *pro tem.* The only question is on the proposed increase of the pay of the

Chaplains. The proposition to increase the pay of the other officers and attaches, has already been settled.

Mr. JOHNSON. If I did not entertain strong hopes of the adoption of the Constitution, I should not be in favor of the increased compensation which has already been provided, nor of that now under consideration, because those serving under the Territorial Government, I think it quite probable, will all be paid very soon; but under the State Government, with the restrictions we have adopted, I do not believe a single dollar will be disbursed to any of the officers or attaches of the Convention within twelve months, and indeed it is very doubtful if they will be able to realise anything for their services within two years from this time.

Mr. COLLINS. I will remind the gentleman from Ormsby, that my colleague (Mr. Brosnan) has notified the Convention of his intention to move to strike out the restriction in regard to expenditures, to which the gentleman alludes.

Mr. JOHNSON. If that were stricken out, I should vote against increasing the pay of any one of the officers or attaches.

Mr. COLLINS. It occurs to me, sir, that this is a most extraordinary movement. At the commencement of the sessions of the Convention, we declared what should be the compensation of each officer and employé, in order that each in accepting his office might take it with his eyes wide open. But after having proclaimed a system of economy from the commencement—after having even deprived ourselves of the necessary, or at all events, the ordinary means of becoming acquainted with the various propositions that were from day to day, and from hour to hour, brought before us, by having them presented in a printed form—it is very strange that we should now, just at the close of the Convention, proclaim to the world that all our past professions amounted to nothing, thus setting an example to the Legislature which is to follow us, under the organization of the State Government, of squandering the people's money. Here we are tying the Legislature down in such a manner that some gentlemen have come to the conclusion that the members will get nothing for their services, whilst others say they care not if they do not get anything; and yet at the same time we are ourselves spending the people's money, before the Legislature can have an opportunity of appropriating it to any purpose. If this question of compensation had come up as a new matter, at the close of the Convention, and the officers and attaches knew nothing of what their pay was to be, or had any reason for expecting a large compensation, the question would be a very different one; but we gave them notice, at the very commencement, that whosoever served the Convention would get so much pay, and no more; and now, after the work is all done, why should we turn about and say that our former declarations and professions of economy were all "poppycock," and that we really did not mean anything of the kind? I know that these gentlemen have been faithful; they have done their work well, and if our coffers were full, I would be willing to give them a handsome bonus.

The PRESIDENT *pro tem.* The only question, the Chair will remind the gentleman, is upon the motion to raise the pay of the Chaplain. The vote has already been taken upon the other proposition.

Mr. COLLINS. The pay of one of the Secretaries has been increased one hundred per cent., and that of the other fifty per cent., I believe. I would like to give the clergyman something, but I do dislike this whole matter.

Mr. BANKS. It would be very easy, I think, by introducing a resolution to start anew.

Mr. GIBSON. It was not supposed originally, I presume, by any one, that we were going to have so much night-work.

Mr. CHAPIN. I hope the motion will be withdrawn. It may possibly affect the action of the Convention upon that section which gentlemen have referred to with so much dissatisfaction.

Mr. JOHNSON. If there is any considerable opposition, I will withdraw it.

Mr. MASON. I will renew it, and I will tell the Convention why. I consider, sir, that the laborer is worthy of his hire, and if a gentleman has devoted years of his life to acquiring those accomplishments which fit him to serve acceptably in such a capacity, he is entitled to a reasonable compensation, as interest on the capital he has invested, and the time he has thus consumed. I am opposed to employing clerks or other officers without paying them adequately, or at least attempting to pay them, for it is true there are very serious doubts as to whether they will ever get anything or not. So far as the preachers are concerned, I am not very particular, but at the same time I think it would look well for us to pay them handsomely. I know it is a hard matter for men to exercise that calling, and I think they should be paid well for it.

Mr. CHAPIN. I contend that we were just as wise on the first day of our session, and just as competent to judge of the value of the services to be rendered, as we are now, and, sir, I am going to vote against granting any increase of pay to those gentlemen. I call for the yeas and nays.

Mr. JOHNSON. I suggest that we were not quite as well informed regarding the clergymen, at the beginning, as we did not know how efficiently they could officiate.

Mr. PARKER. I believe the motion only increases the expenditures of the Convention about forty dollars.

Mr. WETHERILL. If this is not adopted, I hope the other proposition will be reconsidered.

Mr. BANKS. So do I.

The question was taken by yeas and nays, on

the motion to increase the per diem of Chaplains to four dollars, and the vote was—yeas, 13; nays, 7—as follows:

Yeas—Messrs. Bolden, Brosnan, Crawford, Crowman, Gibson, Hawley, Kinkead, Mason, Parker, Proctor, Twitchell, Wetherill, and Mr. President—13.

Nays—Messrs. Banks, Chapin, Collins, DeLong, Fulcher, Kennedy, and McClinton—7.

So the motion was agreed to.

Mr. KINKEAD. Now I move that the pay of members of the Convention be doubled. [Laughter.]

Mr. CHAPIN. I ask to have my vote changed to the affirmative on the proposition just adopted, for the purpose of moving a reconsideration.

Mr. GIBSON. It is too late.

The PRESIDENT *pro tem.* The result of the vote has been announced; it is too late to change.

FINAL REVISION—IMPEACHMENT AND REMOVAL.

The Convention resumed the final reading and revision of the Constitution, as enrolled, commencing with Article VII, entitled Impeachment and Removal from Office, which had been reached at the time of the afternoon recess.

The SECRETARY read Sections 1 and 2, as follows:

SECTION 1. The Assembly shall have the sole power of impeaching. The concurrence of a majority of all the members elected shall be necessary to an impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be upon oath or affirmation, to do justice according to law and evidence. The Chief Justice of the Supreme Court shall preside over the Senate while sitting to try the Governor or Lieutenant Governor on impeachment. No person shall be convicted without the concurrence of two-thirds of the Senators elected.

SEC. 2. The Governor and other State and Judicial officers, except Justices of the Peace, shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust under this State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

Mr. PARKER. I call attention to the language used in Section 2—"to hold any office of honor, profit, or trust, under this State." Is that right?

The PRESIDENT *pro tem.* I think it is.

Sections 3 and 4 were read, as follows:

SEC. 3. For any reasonable cause, to be entered on the journal of each House, which may or may not be sufficient grounds for impeachment, the Chief Justice and Associate Justices of the Supreme Court, and Judges of the District Courts, shall be removed from office on the vote of two-thirds of the members elected to each branch of the Legislature, and the Justice or Judge complained of shall be served with a copy of the complaint against him, and shall have an opportunity of being heard in person or by counsel in his defense; *provided*, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

SEC. 4. Provision shall be made by law for the removal from office of any civil officer, other than those in this article previously specified, for malfeasance or non-feasance in the performance of his duties.

No amendment was proposed.

CORPORATIONS.

The Convention took up, on its final revision, Article VIII, entitled Municipal and other Corporations.

The SECRETARY read Sections 1 to 5, inclusive, as follows:

SECTION 1. The Legislature shall pass no special act in any manner relating to corporate powers, except for municipal purposes; but corporations may be formed under general laws; and all such laws may, from time to time, be altered or repealed.

SEC. 2. All real property and possessory rights to the same, as well as personal property in this State, belonging to corporations, now existing or hereafter created, shall be subject to taxation the same as property of individuals; *provided*, that the property of corporations formed for municipal, charitable, religious, or educational purposes, may be exempted by law.

SEC. 3. Dues from corporations shall be secured by such means as may be prescribed by law; *provided*, that corporators in corporations formed under the laws of this State shall not be individually liable for the debts or liabilities of such corporation.

SEC. 4. Corporations created by or under the laws of the Territory of Nevada shall be subject to the provisions of such laws until the Legislature shall pass laws regulating the same, in pursuance of the provisions of this Constitution.

SEC. 5. Corporations may sue and be sued in all courts, in like cases as individuals.

Mr. BANKS. That should be "in like manner as individuals." That word "cases" was changed to "manner," I think. The word is used in the same connection in the Constitution of California, and I remember that the Committee on Phraseology agreed to strike out the word "cases," and insert "manner" in its place.

Mr. BROSNAN. The words "in like cases" seem superfluous; "as individuals," would answer all purposes.

Mr. BANKS. I will move to substitute the word "manner" in place of "cases." What was the suggestion of the gentleman from Storey?

Mr. BROSNAN. That we might take out those words altogether, and let the section read: "Corporations may sue and be sued in all courts, as individuals." That is, as individuals may sue and be sued; leaving out the words "in like cases."

Mr. BANKS. I think it would be better to say "in like manner."

The amendment proposed by Mr. Banks was unanimously agreed to.

Sections 6 and 7 were read, as follows:

SEC. 6. No bank notes or paper of any kind shall ever be permitted to circulate as money in this State, except the Federal currency and the notes of banks authorized under the laws of Congress.

SEC. 7. No right of way shall be appropriated to the use of any corporation until full compensation be first made or secured therefor.

Mr. BANKS. When Section 3 of Article VII was read, my attention was directed to the language there used, and I will ask the attention of the Convention to it. It provides that the Governor and other officers shall be liable to impeachment, etc., but judgment shall only extend to removal and "disqualification" to hold any office of honor, profit, or trust, under

this State." The phrase "under this State," may be correct, but it has an awkward sound to me. I suggest that it should be changed to "under this Constitution," or "under this State Government."

The PRESIDENT *pro tem.* I believe it is the language ordinarily used.

Mr. BANKS. If there is any sanction of usage for it, I will not move an amendment; if not, I will move to strike out the word "State," and insert "Constitution."

Mr. BROSNAN. It would be shorter to substitute the word "in," for "under," and leave the rest as it is, so as to read: "Any office of honor, profit, or trust, in this State."

Mr. PARKER. That is the same thing.

The PRESIDENT *pro tem.* If there is no objection, the Convention will go back to that section.

Mr. CHAPIN. I object. There are many offices of honor or trust outside of the State Government.

Sections 8, 9, and 10 were read, as follows:

SEC. 8. The Legislature shall provide for the organization of cities and towns by general laws; and restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, except for procuring supplies of water.

SEC. 9. The State shall not donate or loan money or its credit, subscribe to or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes.

SEC. 10. No county, city, town, or other municipal corporation shall become a stockholder in any joint stock company, corporation, or association whatever, or loan its credit in aid of any such company, corporation, or association, except railroad corporations, companies, or associations.

Mr. NOURSE. Just read Section 9 again. It seems to me that it sounds very differently from the way it read when it was passed.

The SECRETARY again read Section 9.

Mr. NOURSE. I thought I heard something about railroads in it. [Laughter.]

Mr. JOHNSON. I believe the gentleman from Washoe has not been here since the gentleman from Storey (Mr. Fitch) has absented himself, and he is therefore somewhat apprehensive on the subject of railroads.

The PRESIDENT *pro tem.* His memory runs back to old times. [Merriment.]

FINANCE AND STATE DEBT.

The Convention proceeded with the final revision of Article IX, entitled Finance and State Debt.

The SECRETARY read Section 1, as follows:

SECTION 1. The fiscal year shall commence January 1st.

Mr. BROSNAN. I would like to have that section amended so as to provide that the fiscal year shall commence "on the first day of January in each year," instead of "January 1st."

The amendment was agreed to by unanimous consent.

Section 2 was read, as follows:

SEC. 2. The Legislature shall provide for an annual tax sufficient to defray the estimated expenses of the State for each fiscal year; and whenever the expenses of any year shall exceed the income, the Legislature shall provide for levying a tax sufficient with other sources of income to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

Mr. KINKEAD. I move to amend by inserting the words "by law," in the first line, after the word "provide."

The amendment was agreed to by unanimous consent.

Mr. PROCTOR. Is not this section likely to conflict with the one which, on the motion of the gentleman from Storey, (Mr. Chapin,) was incorporated in the Schedule?

Mr. BROSNAN. I think so.

Section 3 was read, as follows:

SEC. 3. For the purpose of enabling the State to transact its business upon a cash basis, from its organization, the State may contract public debts; but such debts shall never in the aggregate, exclusive of interest, exceed the sum of three hundred thousand dollars, except for the purpose of defraying extraordinary expenses as hereinafter mentioned. Every such debt shall be authorized by law for some purpose or purposes to be distinctly specified therein, and every such law shall provide for levying an annual tax sufficient to pay the interest semi-annually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished, until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the State, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect, except in cases of money borrowed to repel invasion, suppress insurrection, defend the State in time of war, or, if hostilities be threatened, provide for the public defense.

Mr. BANKS. I would like to understand what is meant in this section by the taxes not being postponed? Does it mean that the time for the collection of the taxes shall not be postponed? Or what is meant by that language?

The PRESIDENT *pro tem.* The gentleman must not ask the Chair too many questions of that nature. [Merriment.]

Mr. BANKS. I suppose it means that the time for the collection shall not be postponed.

The PRESIDENT *pro tem.* I concur.

Mr. BANKS. It says: "And such appropriation shall not be repealed, nor the taxes be postponed or diminished." I do not see that such a provision has any connection with the rest of the section, and it is of no use. I therefore move to strike out the words "postponed or."

Mr. NOURSE. I object.

Section 4 was read, as follows:

SEC. 4. The State shall never assume the debts of any county, town, city, or other corporation whatever, unless such debts have been created to repel invasion, suppress insurrection, or to provide for the public defence.

Mr. CHAPIN. I move to amend Section 2 of this article, which provides for levying taxes to defray the expenses of each year, by adding the words "except as hereinafter provided." Then there can be no possible conflict.

Mr. BROSNAN. But it is designed to amend the section in the Schedule.

Mr. JOHNSON. I shall certainly object to incorporating those words.

TAXATION.

Article X, entitled Taxation, was read on its final revision, as follows:

ARTICLE X.

TAXATION.

SECTION. 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, excepting mines and mining claims, the proceeds of which claims shall be taxed, and also excepting such property as may be exempted by law, for municipal, educational, literary, scientific, religious, or charitable purposes.

Mr. NOURSE. I ask unanimous consent to amend by striking out all after the word "possessory." [Laughter.]

Several members objected.

The PRESIDENT *pro tem.* Objections being heard, the amendment cannot be entertained.

EDUCATION.

Article XI, entitled Education, was taken up on final revision.

The SECRETARY read Sections 1 to 4, inclusive, as follows:

SECTION 1. The Legislature shall encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election, by the people, at the general election, of a Superintendent of Public Instruction, whose term of office shall be two years from the first Monday of January, 1863, and until the election and the qualification of his successor, and whose duties shall be prescribed by law.

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction; and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

SEC. 3. All lands, including the sixteenth and thirty-sixth sections in every township, donated for the benefit of public schools, in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2d, 1862, for each Senator and Representative in Congress; and all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this State; and also the five hundred thousand (500,000) acres of land granted to the new States under the Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841; *provided*, that Congress make provisions for, or authorizes such diversion to be made, for the purposes herein contained; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources, in United States bonds, or the bonds of this State; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; and *provided further*, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

SEC. 4. The Legislature shall provide for the establishment of a State University, which shall embrace departments for agriculture, mechanic arts, and mining, to be controlled by a Board of Regents, whose duties shall be prescribed by law.

Mr. McCLINTON. The section last read sounds rather strangely to me. The University is to have departments for Agriculture, Mechanic Arts, and Mining. Are they going to work at mining in the University? That wording, it appears to me, is incorrect.

Mr. COLLINS. I will state the reasons why that language was incorporated in the article. The law of Congress of 1862 gives to each State thirty thousand acres of land for each member of Congress, for the purpose of a college for the promotion of agriculture and the mechanic arts—

Mr. McCLINTON. I have no fault to find with anything but the phraseology.

Mr. COLLINS. For the sake of avoiding tautology—

The PRESIDENT *pro tem.* (interrupting.) There is no question before the Convention.

Mr. COLLINS. I thought the gentleman from Esmeralda (Mr. McClinton) had raised a question.

Sections 5 to 9, inclusive, were read, (being the rest of the article,) as follows:

SEC. 5. The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may deem necessary; and all professors in said University, or teachers in said schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article XVI of this Constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section, shall be entitled to receive any portion of the public moneys set apart for school purposes.

SEC. 6. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said University and common schools; *provided*, that at the end of ten years they may reduce said tax to one quarter of one mill on each dollar of taxable property.

SEC. 7. The Governor, Secretary of State, and the Superintendent of Public Instruction, shall for the first four years, and until their successors are elected and qualified, constitute a Board of Regents to control and manage the affairs of the University, and the funds of the same, under such regulations as may be provided by law; but the Legislature shall, at its regular session next preceding the expiration of the term of office of said Board of Regents, provide for the election of a new Board of Regents, and define their duties.

SEC. 8. The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said mining department, in such manner as to make it most effective and useful; *Provided*, that all the pro-

seeds of the public lands donated by Act of Congress, approved July 2d, 1862, for a college for the benefit of agriculture, the mechanic arts, and including military tactics, shall be invested by the said Board of Regents in a separate fund to be appropriated exclusively for the benefit of the first-named departments in the University, as set forth in Section 4, above. And the Legislature shall provide that, if through neglect or any other contingency, any portion of the fund so set apart shall be lost or misappropriated, the State of Nevada shall replace said amount so lost or misappropriated in said fund, so that the principal of said fund shall remain forever undiminished.

SEC. 9. No sectarian instruction shall be imparted or tolerated in any school or university, that may be established under this Constitution.

No amendment was offered.

MILITIA.

Article XII, entitled Militia, was read on final revision, as follows:

ARTICLE XII.

MILITIA.

SECTION 1. The Legislature shall provide by law for organizing and disciplining the militia of this State, for the effectual encouragement of volunteer corps, and the safe keeping of the public arms.

SEC. 2. The Governor shall have power to call out the militia to execute the laws of the State, or to suppress insurrection or repel invasion.

No amendment was offered.

PUBLIC INSTITUTIONS.

Article XIII, entitled Public Institutions, was read on final revision, as follows:

ARTICLE XIII.

PUBLIC INSTITUTIONS.

SECTION 1. Institutions for the benefit of the insane, blind, and deaf and dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be prescribed by law.

SEC. 2. A State Prison shall be established and maintained in such manner as may be prescribed by law, and provision may be made by law for the establishment and maintenance of a House of Refuge for juvenile offenders.

SEC. 3. The respective counties of the State shall provide as may be prescribed by law for those inhabitants who, by reason of age and infirmity, or misfortunes, may have claim upon the sympathy and aid of society.

No amendment was offered.

BOUNDARY.

Article XIV, entitled Boundary, was read, on final revision, as follows:

ARTICLE XIV.

BOUNDARY.

SECTION 1. The boundary of the State of Nevada shall be as follows: Commencing at a point formed by the intersection of the thirty-eighth degree of longitude west from Washington with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the eastern boundary line of the State of California; thence in a northwesterly direction along the said eastern boundary line of the State of California to the forty-third degree of longitude west from Washington; thence north along said forty-third degree of west longitude and said eastern boundary line of the State of California to the forty-second degree of north latitude; thence due east along the said forty-second degree of north latitude to a point formed by its intersection with the aforesaid thirty-eighth degree of longitude west from Washington; thence due south down said thirty-eighth degree of west longitude to the place of beginning. And whereas, Congress shall authorize the addition to the Territory or State of Nevada of any portion of the Territory on the easterly border of the foregoing defined limits, not exceeding in extent one degree of longitude, the same shall thereupon be embraced within and become a part of this State; *And furthermore provided*, that all such territory lying west of and adjoining the boundary line herein prescribed, which the State of California may relinquish to the Territory or State of Nevada, shall thereupon be embraced within and constitute a part of this State.

No amendment was offered.

MISCELLANEOUS PROVISIONS.

The Convention took up, on final revision, Article XV, entitled Miscellaneous Provisions.

The SECRETARY read Section 1, as follows:

SECTION 1. The seat of Government shall be at Carson City, but no appropriation for the erection or purchase of capitol buildings shall be made during the next three years.

Mr. PARKER. I inquire if the correct name of this place is Carson City?

Mr. JOHNSON. It is.

Mr. PROCTOR. I named the city myself; "Carson City" is what we used to call it.

Sections 2 to 11, inclusive, were read, as follows:

SEC. 2. Members of the Legislature and all officers, Executive, Judicial and Ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation:

"I, ——, do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State, Convention or Legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear (or affirm) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge, or acceptance, since the adoption of the Constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel, during my continuance in office. And further, that I will well and faithfully perform all the duties of the office of ——, on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury.

SEC. 3. No person shall be eligible to any office who is not a qualified elector under this Constitution. No person who, while a citizen of this State, has, since the adoption of this Constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this State, or who has acted as second, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to hold any office of honor, profit, or trust, or enjoy the right of suffrage under this Constitution. The Legislature shall provide by law for giving force and effect to this section.

SEC. 4. No perpetuities shall be allowed, except for eleemosynary purposes.

SEC. 5. The general election shall be held on the Tuesday next after the first Monday of November.

SEC. 6. The aggregate number of members of both branches of the Legislature shall never exceed seventy-five.

SEC. 7. All county officers shall hold their offices at the county seats of their respective counties.

SEC. 8. The Legislature shall provide for the speedy publication of all statute laws of a general nature, and such decisions of the Supreme Court as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person; *provided*, that no judgment of the Supreme Court shall take effect and be operative until the opinion of the Court in such case shall be filed with the Clerk of said Court.

SEC. 9. The Legislature may at any time provide by law for increasing or diminishing the salaries or compensation of any of the officers whose salaries or compensation are fixed in this Constitution; *provided*, no such change of salary or compensation shall apply to any officer during the term for which he may have been elected.

SEC. 10. All officers whose election or appointment is not otherwise provided for, shall be chosen or appointed as may be prescribed by law.

SEC. 11. The tenure of any office not herein provided for may be declared by law, or when not so declared, such office shall be held during the pleasure of the authority making the appointment; but the Legislature shall not create any office, the tenure of which shall be longer than four years.

The PRESIDENT *pro tem.* Will not the provision last read conflict with another clause in the Constitution which permits the Legislature to increase the number of Supreme Court and District Judges, the terms of whose offices are longer than four years? We have provided in another portion of the instrument that the Legislature may increase the number of Judicial Districts and District Judges, and also that they may provide for the election of two additional Associate Justices of the Supreme Court.

Mr. JOHNSON. I suggest that we add the words, "except as otherwise provided in this Constitution."

Mr. COLLINS. I will offer that amendment. I move to add to Section 11 the words, "except as herein otherwise provided in this Constitution."

Mr. BANKS. That amendment, it occurs to me, is unnecessary. The language by which the Legislature is empowered to provide for the election of two additional Associate Justices seems to be such as to distinctly create the office. However, I will interpose no objection, if gentlemen think the amendment is needed.

The amendment was agreed to by unanimous consent.

Sections 12, 13, and 14 were read, as follows:

SEC. 12. The Governor, Secretary of State, State Treasurer, State Controller, and Clerk of the Supreme Court, shall keep their respective offices at the seat of Government.

SEC. 13. The enumeration of the inhabitants of this State shall be taken under the direction of the Legislature, if deemed necessary, in the year eighteen hundred and sixty-five, eighteen hundred and sixty-seven, eighteen hundred and seventy-five, and every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States in the year eighteen hundred and seventy, and every subsequent ten years, shall serve as the basis of representation in both Houses of the Legislature.

SEC. 14. A plurality of votes given at an election by the people shall constitute a choice, where not otherwise provided by this Constitution.

Mr. McCLINTON. I move to amend Section 13 by striking out the words "the year," and inserting "A. D." instead; the same amendment is necessary in two places. I desire to explain my reason for making the motion, as it was ruled out in considering another section. It is suggested to leave in "the year," and simply insert "A. D." But suppose we leave it to read as it would then: "In the year A. D. 1865." Then if you translate literally the A. D., or *anno domini*, it will be "in the year, in the year of our Lord, 1865."

Mr. KINKEAD. Suppose we strike out "the year," and do not put in "A. D."

Mr. McCLINTON. Then what year will it refer to? The year of the world? I think, sir, this is really of more importance than gentlemen seem to suppose.

The PRESIDENT *pro tem.* I think there is something wanting, unless we put in "A. D."

Mr. BROSNAN. Those initials are usually employed, signifying "in the year of our Lord."

Mr. CHAPIN. I hope the motion of the gentleman from Esmeralda, to strike out "in the year," and insert "A. D." will prevail, and that it will be done in all cases, throughout the instrument.

The amendment was agreed to by unanimous consent.

The Secretary was also instructed, by unanimous consent, to insert "A. D." in all cases where a year is mentioned as a date in the Constitution.

AMENDMENTS.

Article XVI, entitled Amendments, was taken up for final revision.

The SECRETARY read Section 1, as follows:

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become a part of the Constitution.

Mr. PROCTOR. I suggest that in the first part of the amendment we put in the word "respective," before "journals," so that it will read: "Such proposed amendment or amendments shall be entered on their *respective* journals."

The PRESIDENT *pro tem.* I will suggest also, that some question has arisen in California, under an exactly similar clause, relative to the power of the second Legislature, if they see

fit, to amend, or add to any of the amendments adopted by the previous Legislature. The query was, whether such an amendment, if ratified by the people, would be an amendment of the Constitution. I think the matter went to the Supreme Court.

Mr. NOURSE. How was it decided by the Supreme Court?

The PRESIDENT *pro tem.* I cannot recollect at this moment.

The amendment suggested by Mr. Proctor, to insert the word "respective," was agreed to by unanimous consent.

The PRESIDENT *pro tem.* I suggest that the words "yeas and nays," be substituted for "ayes and noes," so as to conform to our previous action.

The amendment was agreed to by unanimous consent.

Section 2 was read, as follows:

SEC. 2. If at any time the Legislature, by a vote of two-thirds of the members elected to each House, shall determine that it is necessary to cause a revision of this entire Constitution, they shall recommend to the electors at the next election for members of the Legislature to vote for or against a Convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall at its next session provide by law for calling a Convention to be holden within six months after the passage of such law, and such Convention shall consist of a number of members not less than that of both branches of the Legislature. In determining what is a majority of the electors voting at such election, reference shall be had to the highest number of votes cast at such election for the candidates for any office, or on any question.

Mr. HAWLEY. The Enrolling Committee recommend the insertion of the word "shall," between the words "election" and "have," in the fifth line of Section 2, as enrolled. It is an accidental omission.

The amendment was agreed to by unanimous consent.

SCHEDULE.

Article XVII, entitled Schedule, was taken up for final revision.

The SECRETARY read Sections 1 to 4, inclusive, as follows:

SECTION 1. That no inconvenience may arise by reason of a change from a Territorial to a permanent State Government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, including counties, towns, and cities, shall continue as if no change had taken place; and all process which may issue under the authority of the Territory of Nevada, previous to its admission into the Union as one of the United States, shall be as valid as if issued in the name of the State of Nevada.

SEC. 2. All laws of the Territory of Nevada, in force at the time of the admission of this State, not repugnant to this Constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the Legislature.

SEC. 3. All fines, penalties, and forfeitures accruing to the Territory of Nevada, or to the people of the United States in the Territory of Nevada, shall inure to the State of Nevada.

SEC. 4. All recognizances heretofore taken, or which may be taken before the change from a Territorial to a permanent State Government, shall remain valid, and shall pass to, and may be prosecuted in the name of the State; and all bonds executed to the Governor of the Territory, or to any other officer or court in his or their official capacity, or to the people of the United States in the Territory of Nevada, shall pass to the Governor, or other officer or court, and his or their successors in office, for the uses therein respectively expressed, and may be sued on, and recovery had accordingly; and all property, real, personal, or mixed, and all judgments, bonds, specialties, choses in action, claims, and debts, of whatsoever description, and all records and public archives of the Territory of Nevada, shall inure to and vest in the State of Nevada, and may be sued for and recovered in the same manner and to the same extent by the State of Nevada, as the same could have been by the Territory of Nevada. All criminal prosecutions and penal actions which may have arisen, or which may arise before the change from a Territorial to a State Government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the State. All offenses committed against the laws of the Territory of Nevada before the change from a Territorial to a State Government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Nevada with like effect as though such change had not taken place, and all penalties incurred shall remain the same as if this Constitution had not been adopted. All actions at law and suits in equity, and other legal proceedings, which may be pending in any of the courts of the Territory of Nevada at the time of the change from a Territorial to a State Government, may be continued and transferred to and determined by any court of the State which shall have jurisdiction of the subject matter thereof. All actions at law, and suits in equity, and all other legal proceedings, which may be pending in any of the courts of the Territory of Nevada at the time of the change from a Territorial to a State Government, shall be continued and transferred to, and may be prosecuted to judgment and execution in any court of the State which shall have jurisdiction of the subject matter thereof; and all books, papers, and records, relating to the same, shall be transferred in like manner to such court.

Mr. KINKEAD. I move to strike out the word "permanent," where it occurs in the first sentence of Section 4—the second line of the section as enrolled—before the words "State Government."

The amendment was agreed to by unanimous consent.

Section 5, [heretofore transferred from the article entitled Salaries,] was read, as follows:

SEC. 5. For the first term of office succeeding the formation of a State Government, the salary of the Governor shall be four thousand dollars per annum; the salary of the Secretary of State shall be three thousand six hundred dollars per annum; the salary of the State Controller shall be three thousand six hundred dollars per annum; the salary of the State Treasurer shall be three thousand six hundred dollars per annum; the salary of the Surveyor-General shall be one thousand dollars per annum; the salary of the Attorney-General shall be two thousand five hundred dollars per annum; the salary of the Superintendent of Public Instruction shall be two thousand dollars per annum; the salary of each Judge of the Supreme Court shall be seven thousand dollars per annum: the salaries of the foregoing officers shall be paid quarterly out of the State Treasury. The pay of State Senators and members of Assembly shall be eight dollars per day for each day of actual service, and forty cents per mile for mileage going to and returning from the place of meeting. No officer mentioned in this section shall receive any fee or perquisites to his own use for the performance of any duty connected with his office, or for the performance of any additional duty imposed upon him by law.

Mr. CHAPIN. I desire to propose an amend-

ment to this section. Another section has been prepared, establishing the salaries of the District Judges, and it is nearly ready to present to the Convention; but in that section, nobody proposes to place the salary of the District Judges in the County of Storey at more than six thousand dollars per annum. Yet the District Judges in that county will be continuously engaged, and will have infinitely more labor to perform than any of the Supreme Court Judges will. Therefore I move to strike out "seven," and insert "six," in the clause relative to the salary of Supreme Court Judges, so that it will read: "The salary of each Judge of the Supreme Court shall be six thousand dollars per annum."

Mr. PROCTOR. I object.

The PRESIDENT *pro tem.* Objection being made, the amendment cannot be entertained.

Section 6 was read, as follows:

SEC. 6. Until otherwise provided by the Legislature, the apportionment of Senators and Assemblymen in the different counties shall be as follows, to wit: Storey County, four Senators and twelve Assemblymen; Douglas County, one Senator and two Assemblymen; Esmeralda County, two Senators and four Assemblymen; Humboldt County, two Senators and three Assemblymen; Lander County, two Senators and four Assemblymen; Lyon County, one Senator and three Assemblymen; Lyon and Churchill Counties, one Senator jointly; Churchill County, one Assemblyman; Nye County, one Senator and one Assemblyman; Washoe and Roop Counties, two Senators and three Assemblymen; Ormsby County, two Senators and three Assemblymen.

Mr. MURDOCK. I understand from the reading that Lyon County has one Senator and three Assemblymen, and Lyon and Churchill one Senator jointly.

The PRESIDENT *pro tem.* That is correct; and then Churchill County has one Assemblyman.

Mr. KINKEAD. I move to amend Section 6 by striking out "the Legislature," in the first line, and inserting instead the word "law," so as to read: "until otherwise provided by law."

The amendment was agreed to by unanimous consent.

Sections 7, 8, and 9 were read, as follows:

SEC. 7. All debts and liabilities of the Territory of Nevada, lawfully incurred, and which remain unpaid at the time of the admission of this State into the Union, shall be assumed by, and become the debt of the State of Nevada. *Provided*, that the assumption of such debt shall not prevent the State from contracting the additional indebtedness, as prescribed in Section 3 of Article IX, of this Constitution.

SEC. 8. The term of State officers, except judicial, elected at the first election under this Constitution, shall continue until the Tuesday after the first Monday of January, A. D. 1867, and until the election and qualification of their successors.

SEC. 9. The Senators to be elected at the first election under this Constitution shall draw lots, so that the term of one-half of the number, as near as may be, shall expire on the day succeeding the general election in A. D. 1866, and the term of the other half shall expire on the day succeeding the general election in A. D. 1868; *provided*, that in drawing lots for all Senatorial terms, the Senatorial representation shall be allotted so that in the counties having two or more Senators the terms thereof shall be divided, as near as may be, between the long and short terms.

Mr. BANKS. The word "near" occurs in two places in Section 9—"as near as may be." I move to add the syllable "ly," so as to read, "as nearly as may be."

The amendment was agreed to by unanimous consent.

Section 10 was read, as follows:

SEC. 10. At the general election in A. D. 1866, and thereafter, the term of Senators shall be for four years from the day succeeding such general election, and members of Assembly for two years from the day succeeding such general election, and the terms of Senators shall be allotted by the Legislature in long and short terms, as hereinbefore provided, so that one-half the number, as nearly as may be, shall be elected every two years.

Mr. BANKS. I suppose the phrase "by law," should be inserted here, in place of "by the Legislature." I would prefer that some other gentleman would move the amendment, as I do not wish to appear so much in the line of these corrections. I will move, however, to strike out "the Legislature," and insert "law," so as to read: "and the terms of Senators shall be allotted by law."

Mr. TAGLIABUE. I object. That is a matter for the Legislature, altogether.

Mr. BANKS. Permit me to make an inquiry of the gentleman. Will not this have to be done by a law? Can the Legislature do it by a resolution? I have not been anxious to secure the incorporation of this phrase "by law" in other provisions, but inasmuch as it has been done in other cases, it seems to me that uniformity is desirable in that respect.

Mr. BROSNAN. Why is it necessary to enact a law for this purpose?

Mr. BANKS. I withdraw the amendment; it can be done by a resolution, I suppose.

Sections 11, 12, and 13 were read, as follows:

SEC. 11. The term of members of the Assembly elected at the first election under this Constitution, shall expire on the day succeeding the general election in A. D. 1865, and the terms of those elected at the general election in A. D. 1865, shall expire on the day succeeding the general election in A. D. 1866.

SEC. 12. The first regular session of the Legislature shall commence on the second Monday of December, A. D. 1864, and the second regular session of the same shall commence on the first Monday of January, A. D. 1866, and the third regular session of the Legislature shall be the first of the biennial sessions, and shall commence on the first Monday of January, A. D. 1867, and the regular sessions of the Legislature shall be held thereafter biennially, commencing on the first Monday of January.

SEC. 13. All county officers, under the laws of the Territory of Nevada at the time when this Constitution shall take effect, whose offices are not inconsistent with the provisions of this Constitution, shall continue in office until the first Monday of January, A. D. 1867, and until their successors shall be elected and qualified; and all township officers shall continue in office until the expiration of their terms of office, and until their successors are elected and qualified. *Provided*, that the Probate Judges of the several counties respectively, shall continue in office until the election and qualification of the District Judges of the several counties or judicial districts. *And further provided*, that the term of office of the present county officers of Lander County shall expire on the first Monday of January,

A. D. 1865, except the Probate Judge of said county, whose term of office shall expire upon the first Monday of December, A. D. 1864. And there shall be an election for county officers of Lander County at the general election in November, A. D. 1864, and the officers then elected shall hold office from the first Monday of January, A. D. 1865, until the first Monday of January, A. D. 1867, and until their successors are elected and qualified.

Mr. HAWLEY. I move to amend Section 13, in the first clause, by striking out the words "shall be," after "successors," and inserting the word "are." Then it will read: "and until their successors are elected and qualified."

The amendment was agreed to by unanimous consent.

Section 14 was read, as follows:

SEC. 14. The Governor, Secretary, Treasurer, and Superintendent of Public Instruction of the Territory of Nevada, shall each continue to discharge the duties of their respective offices after the admission of this State into the Union, and until the time designated for the qualification of the above named officers to be elected under the State Government; and the Territorial Auditor shall continue to discharge the duties of his said office until the time appointed for the qualification of the State Controller; *provided*, that said officers shall each receive the salaries and be subject to the restrictions and conditions as provided in this Constitution; *and provided further*, that none of them shall receive to his own use any fees or perquisites for the performance of any duty connected with his office.

Mr. NOURSE. I move to strike out the word "as" after "restrictions and conditions," in the first proviso, so as to read—"and be subject to the restrictions and conditions provided in this Constitution."

The amendment was agreed to by unanimous consent.

Section 15 was read, as follows:

SEC. 15. The terms of the Supreme Court shall, until provision be made by law, be held at such times as the judges of said court, or a majority of them, may appoint. The first terms of the several District Courts, (except as hereinafter mentioned,) shall commence on the first Monday of December, A. D 1864. The first term of the District Court in the Fifth Judicial District, shall commence on the first Monday of December, A. D 1864, in the County of Nye, and shall commence on the first Monday of January, A.D. 1865, in the County of Churchill. The terms of the Fourth Judicial District shall, until otherwise provided by law, be held at the county seat of Washoe County, and the first term thereof be held on the first Monday of December, A. D. 1864.

SALARIES OF DISTRICT JUDGES.

Mr. BROSNAN. I ask the unanimous consent of the Convention for the insertion of the two following sections in the Schedule, immediately following the section last read.

SEC. 16. The judges of the several District Courts of this State shall be paid, as hereinbefore provided, salaries at the following rates per annum: First Judicial District, (each judge,) six thousand dollars; Second Judicial District, four thousand dollars; Third Judicial District, five thousand dollars; Fourth Judicial District, five thousand dollars; Fifth Judicial District, thirty-six hundred dollars; Sixth Judicial District, four thousand dollars; Seventh Judicial District, five thousand dollars; Eighth Judicial District, thirty-six hundred dollars; Ninth Judicial District, five thousand dollars.

SEC. 17. The salaries of any Judge of said Judicial Districts may, by law, be altered or changed, subject to the provisions contained in this Constitution.

Mr. PROCTOR. What district is Lander County?

Mr. BROSNAN. It is the seventh; the salary is five thousand dollars.

Mr. JOHNSON. By leave of the Convention, I will read over the provision naming the counties embraced in each district, and the salaries of the judges, so that each member may understand what is proposed to be the compensation of the judge in his district.

The First Judicial District comprises Storey County; six thousand dollars for each of the three judges in that district. The Second District is Ormsby County; four thousand dollars. Third, Lyon County; five thousand dollars. Fourth, Washoe and Roop; five thousand dollars. Fifth, Nye and Churchill; thirty-six hundred dollars. Sixth, Humboldt; four thousand dollars. Seventh, Lander; five thousand dollars. Eighth, Douglas; thirty-six hundred. Ninth, Esmeralda; five thousand dollars.

Mr. PROCTOR. I move to substitute "six" for "five" in the clause fixing the salary of the Judge of the Seventh District, so as to give him a salary of six thousand dollars. My reason for making the motion is this: I think the judge of that district will have more to do than either of the judges of the Storey County District, who are to receive six thousand dollars a year. It will be, from the beginning, the second county in importance in the State, and perhaps in less than two years it may contain more people even than the County of Storey.

Mr. BROSNAN. I would inquire of some member of the Committee on Schedule, which had this subject under consideration whilst the member from Lander (Mr. Warwick) was present, what his views were in regard to the salary of the Judge of that District?

Mr. PROCTOR. I do not think it was under discussion whilst he was present.

Mr. JOHNSON. I spoke to the gentleman from Lander about the matter, some time ago, and he said he would consider it; but he left without making any response.

Mr. MASON. This is a subject which has never been brought up, I believe, till to-day, and I had supposed the understanding was that the District Judges were to make their offices pay by selling decisions. [Merriment.]

Mr. KENNEDY. It was considered in the Committee on Schedule, and it was agreed to report a section similar to this, but by some oversight it was overlooked when the report was prepared. I do not remember what the gentleman from Lander (Mr. Warwick) said on the subject, and I think I only conversed about it with the gentleman from Douglas, (Mr. Hawley,) and the gentleman from Humboldt, (Mr. Dunne.)

The question was taken on the amendment offered by Mr. Proctor, and it was agreed to.

Mr. CHAPIN. I hope the delegates will remember that each county is obliged to foot the bill for its own Judge. In some cases, it seems to me, the salaries are higher than they ought

to be, but if the delegates from each of the counties interested are satisfied, I have not a word to say.

Mr. PROCTOR. I should not have proposed the amendment in regard to Lander County, if the delegate from that county had been present, but I am satisfied that it will meet his views, and also receive the approval of the people of Lander County.

Mr. JOHNSON. I believe it is provided in some part of the Constitution that the Judges are to be paid out of the treasuries of the respective counties.

Mr. BROSNAN. That provision is contained in the Judicial Article.

Mr. JOHNSON. Very well.

Mr. CROSMAN. This new section provides for the Judges' salaries only for the first term, I understand.

Mr. JOHNSON. No, sir; for all time, or until the Legislature shall deem it expedient to make a change. It is left subject to alteration by the Legislature, is it not?

The PRESIDENT *pro tem.* Yes, sir.

Mr. BROSNAN. It is provided in some portion of the Constitution that the Legislature may impose a docket fee, and I believe it was the intention that such fee should be paid over to the Judges, as a portion of their salaries. This, it strikes me, would be a proper place to provide for that; otherwise, unless some provision is made, it will necessarily go into the general fund.

Mr. JOHNSON. I believe the language is explicit enough. It occurs in Section 16 of the article on Judicial Department.

The PRESIDENT *pro tem.* I think it only provides that the money shall be accounted for and paid over.

Mr. BROSNAN. They are to pay it over, and then it is to be applied as provided by law. Let the section be read.

The SECRETARY read Section 16 of the article entitled Judicial Department, as follows:

SEC. 16. The Legislature, at its first session, and from time to time thereafter, shall provide by law that upon the institution of each civil action and other proceedings, and also upon the perfecting of an appeal in any civil action or proceeding in the several Courts of Record in this State, a special court fee or tax shall be advanced to the clerks of said courts respectively by the party or parties bringing such action or proceeding, or taking such appeal; and the money, so paid in, shall be accounted for by such clerks, and applied towards the payment of the compensation of the Judges of said courts, as shall be directed by law.

The PRESIDENT *pro tem.* That is all right; the whole ground is covered by that section.

Mr. CHAPIN, and others, demanded the yeas and nays on the adoption of the two new sections proposed by Mr. Brosnan, as amended.

The question was taken by yeas and nays, and the vote was—yeas, 21; nays, none—as follows:

Yeas—Messrs. Banks, Belden, Brosnan, Chapin, Collins, Crawford, Crosman, DeLong, Folsom, Gibson, Hawley, Kennedy, Kinkead, Mason, McClinton, Nourse, Parker, Proctor, Tagliabue, Wetherill, and Mr. President—21.

Nays—None.

So the sections were adopted.

THE SCHEDULE—CONTINUED.

The SECRETARY read Section 18, (as renumbered,) as follows:

SEC. 18. The Governor, Lieutenant-Governor, Secretary of State, State Treasurer, State Controller, Attorney-General, Surveyor-General, Clerk of the Supreme Court, and Superintendent of Public Instruction, to be elected at the first election under this Constitution, shall each be qualified and enter upon the duties of their respective offices on the first Monday of December succeeding their election, and shall continue in office until the first Tuesday after the first Monday of January, A. D. 1867, and until the election and qualification of their successors respectively.

Mr. JOHNSON. I think "shall each qualify," would read better than "shall each be qualified," in this section. I move to make that change.

The amendment was agreed to by unanimous consent.

Section 19 was read, as follows:

SEC. 19. The Judges of the Supreme Court, and District Judges, provided to be elected at the first election under this Constitution, shall be qualified and enter upon the duties of their respective offices on the first Monday of December succeeding their election.

Mr. JOHNSON. That requires the same amendment; strike out "be qualified," and insert "qualify."

The amendment was agreed to by unanimous consent.

Sections 20 and 21 were read, as follows:

SEC. 20. All officers of State, and District Judges, first elected under this Constitution, shall be commissioned by the Governor of this Territory, which commission shall be countersigned by the Secretary of the same, and shall qualify before entering upon the discharge of their duties before any officer authorized to administer oaths under the laws of this Territory; and also the State Controller and State Treasurer shall each respectively, before they qualify and enter upon the discharge of their duties, execute and deliver to the Secretary of the Territory of Nevada, an official bond, made payable to the people of the State of Nevada, in the sum of thirty thousand dollars, to be approved by the Governor of the Territory of Nevada; and shall also execute and deliver to the Secretary of State such other or further official bond or bonds as may be required by law.

SEC. 21. Each county, town, city, and incorporated village, shall make provision for the support of its own officers, subject to such regulations as the Legislature may prescribe.

Mr. JOHNSON. I move to amend Section 21, by striking out the words "the Legislature may prescribe," and inserting "may be prescribed by law;" so that it will read: "Subject to such regulations as may be prescribed by law."

The amendment was agreed to by unanimous consent.

Mr. CROSMAN. I will ask, while I think of it, how the District Judge of the Fifth District is to get his pay?

The PRESIDENT *pro tem.* Out of the treasuries of the two counties.

Mr. CROSMAN. I think some arrangement to apportion it between them should be made.

The PRESIDENT *pro tem.* That may be done by law.

Sections 22, 23, and 24 were read, as follows:

SEC. 22. In case the office of any Justice of the Supreme Court, District Judge, or other State officer shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor, until it shall be supplied at the next general election, when it shall be filled by election, for the residue of the unexpired term.

SEC. 23. All cases, both civil and criminal, which may be pending and undetermined in the Probate Courts of the several counties, at the time when under the provisions of this Constitution said Probate Courts are to be abolished, shall be transferred to and determined by the District Courts of such counties respectively.

SEC. 24. At the first regular session of the Legislature, to convene under the requirements of this Constitution, provision shall be made by law for paying for the publication of six hundred copies of the proceedings of this Convention, in book form, to be disposed of as the Legislature may direct; and the Hon. J. Neely Johnson, President of this Convention, shall contract for, and A. J. Marsh, Official Reporter of this Convention, under the direction of the President, shall supervise the publication of such proceedings. Provision shall be made by law, at such first session of the Legislature, for the compensation of the Official Reporter of this Convention, and he shall be paid in coin, or its equivalent. He shall receive for his services, in reporting the debates and proceedings, fifteen dollars per day during the session of the Convention, and seven and one-half dollars additional for each evening session, and thirty cents per folio of one hundred words for preparing the same for publication; and for supervising and indexing such publication, the sum of fifteen dollars per day during the time actually engaged in such service.

Mr. HAWLEY. I move to amend the section last read, by inserting before the word "proceedings," where it first occurs, the words "debates and;" so as to read, "provision shall be made by law for paying for the publication of six hundred copies of the debates and proceedings of this Convention," etc.

The amendment was agreed to by unanimous consent.

Mr. KENNEDY. I understood this section was to be placed last in the article.

The PRESIDENT *pro tem.* The Secretary will so number it.

The SECRETARY. That was so; it will be numbered Section 26.

LIMITATION OF TAXATION, ETC.

Section 24, (as renumbered,) was read, as follows:

SEC. 24. For the first three years after the adoption of this Constitution the Legislature shall not levy a tax, for State purposes, exceeding one per cent. per annum on the taxable property in the State, nor shall any appropriations be made out of the revenue arising from said tax, except in the following order, to wit: First, for paying interest upon the public debt; second, for salaries of State officers; third, for State Prison expenses; fourth for educational purposes; fifth, for legislative and miscellaneous expenses. *Provided*, the Legislature may levy a special tax not exceeding one-fourth of one per cent. per annum, which shall be appropriated to the payment of the indebtedness of the Territory of Nevada, assumed by the State of Nevada, and for that purpose only, until all of said indebtedness is paid.

Mr. BROSNAN. It seems to me, Mr. President, that that section, as it now reads, is in conflict—apparently so, at all events, if it does not come in actual conflict—with Section 2 of Article IX, which provides that the Legislature shall levy such amount of tax as may be sufficient to defray the annual expenses of the State Government, and that in case there shall be a deficit in any year, a tax shall be levied for the ensuing year, sufficient not only to meet the expenses of that year, but also to cover the balance remaining unpaid from the previous year.

The PRESIDENT *pro tem.* Does the gentleman make any motion?

Mr. BROSNAN. I scarcely know how to get at it; but it seems to me to be very manifest that one of these provisions may run counter to the other. If we retain the provision in the section just read, it appears to me there must necessarily be some modification of that contained in Section 2 of Article IX, so that no conflict may arise hereafter, in the event of this tax of one and one-fourth per cent. proving to be insufficient. In the first place, by Section 2 of Article IX, we give the Legislature scope and verge enough to raise all the money that shall be necessary; and in the second place, in the section now under consideration, we leave the Legislature in a "cribbed, cabined, and confined" condition, in which it may be unable to raise the requisite amount by taxation. In case of a conflict of that nature, one or the other of these provisions must yield, and I do not think we should place in our Constitution provisions which stand in such an antagonistic attitude in relation to each other. I would like to hear the views of other members of the Convention on the subject, so as to learn whether the difficulty is as apparent to them as it certainly is to me.

Mr. BANKS. As the gentleman from Storey calls for the views of other members, although my own may not be worth much, I will say that in my judgment it is clearly necessary either to change this section in the Schedule, or the former one to which he has alluded, so as to prevent a conflict. I hope, therefore, that the gentleman will submit a motion for that purpose.

Mr. PROCTOR. Would not a motion be in order to reconsider the vote by which the Convention adopted this section of the Schedule?

The PRESIDENT *pro tem.* I think the section was passed to-day; a motion to reconsider would therefore be in order.

Mr. PROCTOR. I voted for the section, and I now make a motion to reconsider the vote by which it was adopted.

The question was taken, and the motion to reconsider was agreed to.

Mr. PROCTOR. I move that the section be stricken out altogether.

Mr. CHAPIN. I hope no such motion as

that will prevail. I ask for the reading of the section.

The SECRETARY again read Section 24.

Mr. CHAPIN. I offer an amendment to the motion of the gentleman from Nye, (Mr. Proctor.) I move to strike out all after the provision that the Legislature shall not levy a tax exceeding one per cent. per annum for State purposes. Then, if gentlemen desire, they can move to make it one and one-fourth per cent., so as to include the provision for the Territorial debt.

Mr. BANKS. Let us have a division of that question. How will the section read with the proposed amendment?

The PRESIDENT *pro tem.* The Chair understands that the motion is to strike out all after the word "State," so that the section will read:

"For the first three years after the adoption of this Constitution, the Legislature shall not levy a tax for State purposes exceeding one per cent. per annum on the taxable property in the State."

Mr. NOURSE. That limits the Legislature, then, to a tax of one per cent.

Mr. KENNEDY. I shall object to striking out that proviso, because I think there ought to be a special tax to pay the indebtedness of the Territory.

Mr. BROSNAN. I call for a division of the question.

The PRESIDENT *pro tem.* A division being called for, the question will be first on striking out so much of the section as relates to the order of appropriations, and second, on striking out the proviso authorizing the Legislature to levy a tax of one-fourth of one per cent., for the payment of the Territorial indebtedness. The Secretary will read that portion which refers to the order of appropriations.

The SECRETARY read, as follows:

"Nor shall any appropriation be made out of the revenue arising from said tax, except in the following order, to wit: First, for paying interest on the public debt. Second, for salaries of State officers. Third, for State Prison expenses. Fourth, for educational purposes. Fifth, for Legislative and Miscellaneous expenses."

The PRESIDENT *pro tem.* The question is first on striking out that portion just read.

The question was taken, and the portion of the section last read was stricken out.

The PRESIDENT *pro tem.* The question is next on striking out the proviso. The Secretary will read it.

The SECRETARY read the proviso, as follows:

"*Provided*, the Legislature may levy a special tax, not exceeding one-fourth of one per cent. per annum, which shall be appropriated to the payment of the indebtedness of the Territory of Nevada, assumed by the State of Nevada, and for that purpose only, until all of the said indebtedness is paid."

Mr. CHAPIN, and others, demanded the yeas and nays on the motion to strike out the proviso.

The question was taken by yeas and nays, and the vote was—yeas, 9; nays, 12—as follows:

Yeas—Messrs. Banks, Chapin, Collins, DeLong, Fulcon, McClinton, Proctor, Wetherill, and Mr. President—9.

Nays—Messrs. Belden, Brosnan, Crawford, Crosman, Gibson, Hawley, Kennedy, Kinkead, Mason, Nourse, Parker, and Tegtmeyer—12.

So the Convention refused to strike out the proviso.

Mr. JOHNSON. Allow me a few words in explanation of my vote. I have voted for the motion to strike out this proviso, because I am in favor of striking out the whole section. I do not think this is the proper place for such a provision. If we adopt a State Government we must necessarily pay such taxes as are required to support that State Government, whether it be the ordinary expenses accruing from year to year, or our present Territorial indebtedness, which the State assumes, as it is in honor compelled to do. We must pay taxes sufficient to defray all the expenses necessary to be incurred, of whatever character, and, as I have heretofore had occasion to show, it is impossible, at this time, to make even an approximate estimate of these expenses. I think it must be quite apparent to every member, that this section is in conflict with the Constitutional provision which we have previously adopted, and therefore I have voted against the proviso, and shall vote to strike out the entire section.

Mr. HAWLEY. I ask the Convention to bear with me one moment upon a question of privilege. I merely wish to state—and I had intended to call the attention of the Reporter of the *Virginia Union* to the fact before this time—that he has made a serious mistake in his telegram, as it appears in the paper of this morning. He represents that this section limits the tax to one per cent. instead of one and one-quarter per cent., as it really does. I trust that the necessary correction will be made, so that our action may not be misunderstood.

The PRESIDENT *pro tem.* The question now recurs upon the motion of the gentleman from Nye, (Mr. Proctor,) to strike out the entire section, as it has been amended.

Mr. NOURSE. If I understand it correctly, the section, as it now stands, limits the rate of taxation to one per cent. per annum.

The PRESIDENT *pro tem.* As it stands now, taxation is limited to one and one-fourth per cent. per annum.

Mr. NOURSE. Well, it is all the same, because the one-fourth is for the territorial indebtedness. Now, sir, I cannot believe that we have an aggregate amount of taxable property exceeding twenty-five millions of dollars, and a tax of one per cent. upon that would only amount to two hundred and fifty thousand dollars a year, from which must be deducted one-quarter, or one-third of that amount for delinquencies, etc., leaving only from one hundred and fifty to two hundred thousand dollars net revenue. I believe that such a restriction would certainly be ruinous, because it would result in running our scrip down to about fifteen

cents on the dollar, and therefore I hope that the whole section will be stricken out, and that we shall leave the Legislature free to levy such taxes as may be found necessary for the support of the government.

Mr. CHAPIN. I would like to remind the gentleman from Washoe that provision has heretofore been made by which the State is authorized to borrow money to the amount of three hundred thousand dollars, which will give one hundred thousand dollars a year for the three years, in addition to the revenue from taxation. Now, if we cannot run the State on that amount, for my part, I am going home to oppose a State Government, and I can get hundreds, and possibly thousands of other men to do the same thing. I am not in favor of opening the floodgates of taxation upon the people, as I am inclined to think, though I do not know it, that it is perhaps the policy of some gentlemen to do, in order to defeat the Constitution before the people, and therefore I am strenuously opposed to striking out this section.

Mr. BANKS. The gentleman from Storey has stated precisely my position. I believe that by the exercise of such economy as people would naturally exercise in their own private affairs, a State Government can be administered upon the revenue derived from a tax of even less than one per cent. If I find it cannot be, however, then I am going to exert my influence, whatever it may be worth, against the adoption of the Constitution. I want either a cheap State Government, or none at all. As I have said heretofore, if we limit the State Legislature to a certain amount, the result will be the same as in the case of an individual who is restricted to a given amount of expenditure, beyond which he cannot be allowed to go. A man will always accommodate himself to his income, if he is obliged to do it, and we all know that the man who has an income of only one thousand dollars a year gets along just about as comfortably as the man who has ten thousand, the difference being that the former lives in a less expensive style, whilst the latter feels that he can afford more of the luxuries of life.

Mr. JOHNSON. I would like to ask the gentleman from Storey (Mr. Chapin) a question, to see if I understood him aright. Did he state that if this section shall be stricken out, he was going to oppose the State Government? Is that the position he takes?

Mr. CHAPIN. No, sir. I say that unless I can have such assurances as will satisfy me that we can rely upon having an economical administration of our State Government, I certainly will go home and labor against it with all my might. And I tell you, Mr. President, that a majority of the people of this Territory will go against it, unless we put in some kind of a safeguard of this character. If with a taxable property of forty millions, including the proceeds of the mines, as well as the surface property—for I believe we shall have that amount, and with the privilege of borrowing three hundred thousand dollars, in addition, we cannot support a State Government upon a taxation of one per cent. for State purposes, and one-fourth of one per cent. for the Territorial debt, assumed by the State—then we had better let it alone, remain a little longer in our present tadpole condition, and thus avoid ruinous taxation.

Mr. JOHNSON. Suppose the taxable property should amount to no more than twenty millions of dollars? Could the Legislature still reduce the expenditures so as to come within the amount of revenue derived from the taxable property, with the proposed limited rate of taxation?

Mr. CHAPIN. Then, if the State were cut down to that sum, I would have it do as the young man is required to do when his old father sends him out into the world with his portion of the patrimony. Whether it be five hundred, or five thousand, or ten thousand dollars, he has to go to work, and make his plans, and shape his business accordingly, and our new State will have to do the same thing.

Mr. JOHNSON. The trouble is this, that we have already provided what the expenses of the State shall be. In the first place, we have framed that part of our Constitution which prescribes the amount of the expenditures of the State Government, and then we have undertaken to shape the sources of income accordingly, and therefore it will not be possible for the Legislature to reduce the expenditures to correspond with a reduced income. We have prescribed in the Constitution that certain expenses shall be borne, it matters not how little or how much may be the receipts of the public treasury, and now we must make provision for the payment of those expenses, by designating the sources whence the money is to be derived. We have provided that certain Territorial indebtedness shall be paid, or in other words, we have in the Constitution contracted a certain amount of indebtedness, which must be discharged, and therefore it is not possible for us to limit the amount or rate of taxation, unless we have more authentic data than any member on this floor can present, upon which to base an estimate, as to what the per-centage of taxation ought to be.

We have had evidence heretofore of the variance and diversity of views and opinions existing among the members of the Convention as to what the valuation of property will prove to be, and what the revenue derived from a specified rate of taxation would amount to, and the difference in the estimates of members of the Convention, apparently equally well informed, ranges as high as one hundred per cent. If we were all agreed that the taxable property of the State will amount to a given sum, we might then with some degree of certainty approximate to an estimate, and upon such es-

timate we could, with propriety fix a limit upon the taxation to be levied by the Legislature; but as there are diversities and differences of opinion existing, some gentlemen asserting that the basis of revenue will not exceed twenty or twenty-five millions of dollars, whilst others, as sanguine as the gentleman from Storey who last spoke, (Mr. Chapin,) place it as high as forty millions, I repeat that we cannot fix, and have it not in our power to fix upon any rate of taxation.

We have created, by prescribing salaries, and other State expenditures, and by assuming the Territorial debt, a certain amount of annual indebtedness, which must be met. How? By taxation, evidently. There is no other way. But, says the gentleman from Storey, "we have fixed the rate of taxation so as to cover that indebtedness." That may be true, if his hypothesis be correct, but if my hypothesis, or those of other gentlemen be true, that rate of taxation certainly will not suffice for the indebtedness we have already, and that which we must necessarily create. Nevertheless we have provided for a public debt, and it must be paid, else the pligated honor and faith of the Territory and State, and of the members of this Convention, must go for nought—else that debt is repudiated. We have already declared that a given amount of money shall be paid as salaries of the Judges, the Governor, and other State officers, so much as per diem and mileage of the members of the Legislature, other amounts, or whatever shall be necessary, for the expenses of the State Prison, and for the incidental expenses of the Legislature and other departments of the Government. And all this is indebtedness which we have created by the Constitution. But after we have said that these payments shall be made, thus and so, we now turn around, and say in this section, to these officers, and others to whom we have promised such payments: "You shall be paid thus and so, according to our promise, provided a rate of taxation of one per cent. shall be enough to raise a sufficient amount of money." And if it is not enough, what is the alternative? Why, they will not be paid.

Now, sir, do we want to cheat anybody? Do we desire to delude men into taking office under our State Government, by holding out on the one hand a declaration and promise that they shall be paid a specified salary, whilst at the same time we annex a qualification that they shall only be paid that salary if a taxation of one per cent. will raise money enough for the purpose? No, sir. Is it not the wiser policy, and the only proper course for us to pursue, to leave the rate of taxation to be fixed by the Legislature from year to year, in accordance with what may be, from time to time, the necessities of the State?

Gentlemen have presented estimates and calculations of what they conceive may be the anual expenditures of the State Government, nd the income from taxation, and others have prepared like estimates which they are ready to present. In most of these estimates, gentlemen have far exceeded my calculations in respect to the probable revenue. But I find no fault on that account. It is a mere difference of judgment and opinion, since none of us have any reliable data to be governed by. In respect to the compensation that shall be paid for public services, the majority of the Convention has also exceeded in many instances that which my judgment and vote stand recorded in favor of. I do not deny their right to fix the compensation at higher rates than in my judgment was warranted, but at the same time I claim the right to insist that when they do that, it shall not be made a delusion and a snare; that the promise shall be carried out in good faith. I protest against the bad faith which will be exhibited by putting in a prohibitory section like the one under consideration, which will probably prevent our officers to be elected from receiving the amount of salary promised them.

I cannot conceive that there is any necessity for this limitation in order to prevent the Legislature from making extravagant appropriations, as I do not believe that any member present really thinks it possible for the State to raise money enough to pay anything more than the absolutely necessary current expenses of the Government. What object can there be, then, for the Legislature to make extravagant appropriations?

Mr. KENNEDY. The gentleman's time is up. ["Leave, leave!"]

Mr. JOHNSON. I regret that my friend from Lyon should take occasion to call me to order before the Chair finds it necessary.

Mr. KENNEDY. The gentleman from Ormsby has himself expressed his wish to have the rule strictly enforced, and I am only carrying out his own doctrine.

Mr. JOHNSON. I care nothing about it, if gentlemen are unwilling to hear the truth spoken—if they refuse to listen to facts which they will be compelled to realize hereafter. I have no objection to conforming to the wishes of the Convention as expressed by its rules, and in conclusion will only add, that I oppose this section with no factious design, but with a sincere desire to harmonize our action. I trust that the vote of the majority by which the section was originally adopted, does not evince a fixed determination on the part of the Convention to insist upon the provision, when it is shown that it may come in direct conflict with other provisions of the Constitution which we have adopted.

Mr. PROCTOR. It seems to me that in framing this Constitution, from beginning to end, we have guarded as closely and completely as it is possible for us to do, against any abuses in the shape of expensive and extravagant legislation. We have restricted the State debt to three hundred thousand dollars, and I do not see that it is necessary to make any further limitation or restriction, so far as that is con-

cerned. Now this provision introduced in the Schedule by the gentleman from Storey, (Mr. Chapin,) will most certainly conflict with the spirit and intent of our Constitution, and I think the figures will show it. For instance, from the gentleman from Ormsby, (Mr. Kinkead,) and from the report of the Auditor, which was quoted from the other day, we learn that there is a Territorial debt upon which we will have to pay about eighty thousand dollars a year. Is that correct?

Mr. COLLINS. What was that?

Mr. PROCTOR. That the State has to pay, on account of the Territorial debt, an amount of about eighty thousand dollars a year. Is that it?

Mr. COLLINS. No, sir; not exactly.

Mr. JOHNSON. The State will be compelled to pay the interest on a debt far exceeding that amount.

Mr. GIBSON. The interest and principal to be paid amounted, I believe it was stated, to eighty-three thousand dollars a year for four or five years.

Mr. KINKEAD. The statement was made by my colleague, (Mr. Johnson,) and I think the estimate he made was correct, namely, that during the first three years we shall be required to pay about eighty-three thousand dollars a year, of principal and interest on the Territorial debt.

Mr. JOHNSON. The average amount to be paid during the next four and a half years, of principal and interest on the present Territorial indebtedness, is eighty-three thousand and some odd dollars a year. That was my statement. The debt must all be paid, principal and interest, within the next four years and a half.

Mr. PROCTOR. Then under the limitation in this section, we can only raise a tax of one-fourth of one per cent., to be applied for the purpose of paying the interest on that indebtedness, and the principal as it becomes due; and if we have only twenty-five millions of taxable property, the tax will not yield a revenue for that purpose exceeding sixty thousand dollars a year. Yet the Constitution expressly provides that we shall pay upwards of eighty thousand dollars a year. How are we going to pay eighty thousand dollars a year when we can only collect sixty thousand out of which to pay it?

Mr. KINKEAD. We expect to have more taxable property.

Mr. PROCTOR. But we must base our State Government on what we have got, and not upon what we may expect to have in the future. And so far as having a cheap government is concerned, I think if we retain this section the result will be that the expense, for example, of supporting the State Prison, will be paid, not out of the State Treasury, but out of the credit of the State, which, under such a provision, will not be worth more than in the neighborhood of fifteen cents on the dollar, so that the State will have to pay about ten dollars in State credit for every dollar's worth of supplies furnished. And there will be the same condition of things in every department of the State Government.

[The PRESIDENT in the chair.]

Mr. NOURSE. I do not know as I understand exactly what the gentleman from Storey (Mr. Chapin) meant when he referred to the three hundred thousand dollars to be raised. Was it anything more than a three hundred thousand dollar loan?

Mr. CHAPIN. Shall I answer the gentleman?

Mr. NOURSE. I would like to understand it.

Mr. CHAPIN. The State is authorized to create a debt to the amount of three hundred thousand dollars, and no more, and I stated that the money thereby raised could, if necessary, be used in the first, second, and third years, giving one hundred thousand dollars a year in addition to the amount derived from taxation.

Mr. NOURSE. Then I say, shame on us if we provide that the State shall, the very first thing, plunge into debt for its current expenses. It is all well enough to allow the State to borrow money in order to pay its way before the taxes come in, but to deliberately plan it, to provide for raising a tax which we know will not be large enough to pay the current expenses for two or three years, with the expectation that the State will run in debt in order to make up the deficiency, it seems to me would be a shame and a disgrace. I do not believe in incurring any debt, unless it is absolutely necessary. I do not believe in undertaking to carry on a State Government, unless we are able to do it, and if the people do not believe themselves to be able to support their State Government without running into debt, then it seems to me the people ought to vote against a State Government. Now I am desirous of limiting the expenditures as much as possible, as my votes will bear witness, all the way through the Convention, but I insist that whatever tax it may be necessary for the Legislature to levy, in order to pay expenses, that tax it should be left at liberty to impose, so as to furnish the means of paying such expenses as must be incurred. The Legislature should not be allowed to call on future generations to help pay the current expenses of the State. I do not believe in adopting any ruinous policy of that sort. The cheapest way to pay the current expenses necessary to be incurred in running a State Government, is to levy a tax at once, heavy enough to pay everything in cash, because when you levy so small a tax that you begin to get behind-hand, that moment the State scrip, or Auditor's certificates, begin to depreciate, and as soon as the State scrip depreciates to seventy-five cents on the dollar, of course the State has to pay four dollars for every three, and when it gets down to fifty cents the State must pay at the ruinous

rate of two dollars for one. Therefore the cheapest way is to take the bull by the horns at the start; to look the thing squarely in the face; to leave the Legislature authority to collect money enough by taxation to pay all the necessary bills in cash, whenever they become due.

There is no doubt that at the best our expenditures must be very heavy. The alarming increase of crime which has been witnessed in the past few months, admonishes us that our State Prison will be very expensive. If the laws are faithfully administered, and we do not always have a Governor who will pardon criminals out of the State Prison as fast as they go into it, there will be some permanent boarders in that institution. Why, sir, look at the number of convicts in the California State Prison—some four or five hundred at the present time.

Mr. DuLONG. But California is not good authority with the gentleman.

Mr. NOURSE. It was to the authority of the Supreme Court of California that I objected.

Mr. DuLONG. Well, there is some resemblance between the State Prison and the Supreme Court. [Merriment.]

Mr. NOURSE. If the gentleman thinks so, I do not object. As I was saying, California has now some four or five hundred prisoners in the State Prison, and we know that those desperadoes who commit crimes always flock to the newer and more flourishing mining regions. As soon, therefore, as we get over the present depression, which we hope is only of a temporary character, and begin to enjoy flush times again, we must expect to have great numbers of that class amongst us. The increase of crime will be enormous, and consequently, if our officers do their duty, our State Prison expenses will also be enormous.

If we could positively know that one per cent. would be a sufficient tax to support the Government, then for my part I would cheerfully vote to limit the tax to one per cent., for, as gentlemen well know, I have voted all along to limit and restrict the Legislature, wherever it could properly be done. But what I complain of is, that whilst we cannot possibly foresee the extent of our State expenses, it is proposed to limit the income without any possibility of limiting the expenditures. We cannot know what the future will bring forth; we are all afloat in regard to this matter. We cannot say, even approximately, how much the annual expenditures will be, and we cannot agree within five, ten, fifteen, or even twenty millions of dollars, as to the probable amount of the taxable property of the State. Therefore, it seems to me, with all respect to the gentlemen who favor the pending proposition, that it is simply absurd in us to undertake to say what shall be the limit of taxation. That is the way it looks to me.

Mr. DuLONG. Now, sir, we have once had in this Convention a long, protracted fight in regard to this very same matter, and I thought we had them settled it; but it seems that such was not the case. What reason gentlemen have for backing and filling, and shopping around in regard to this question, I do not know, and I do not much care. I will start in with the declaration of opinion, upon which I propose to act, namely, that if we are not safe in attempting to carry on a State Government on a tax of one per cent., we had better not go into it.

Mr. NOURSE. It would be safe if you would tax everything equally.

Mr. DuLONG. That is the very point. Up to the time when the matter of taxation was settled, the gentleman from Weaver wanted to restrict the Legislature in everything; but the very moment the article on Taxation was finally adopted, he seems to have abandoned that policy, and it looks to me as if the only care he has about the Constitution is to get in something which will damn it before the people.

Mr. NOURSE. Allow me to explain. I say if all the property in the State were subject to taxation equally, one per cent. would in my opinion be ample to raise a revenue sufficient to pay the bills, but as it is now, I am satisfied that one per cent. will not be enough, and for that reason I am opposed to the restriction.

Mr. DuLONG. Is the gentleman from Weaver in favor of the adoption of the Constitution?

Mr. NOURSE. Personally, I would desire that the Constitution should be adopted, but I cannot conscientiously, and shall not vote for it, as a representative of the people.

Mr. DuLONG. Now we know where the difficulty is with the gentleman. He is trying to make an instrument which he can go before the people and defeat. That is his statement.

Mr. NOURSE. I have not said so. I have said that personally I desired a State Government, and by what authority does the gentleman from Storey assert that I desire to defeat it? I say the adoption of the State Government will be for my advantage, personally, but in view of my position I cannot recommend its adoption, and I cannot conscientiously vote for its adoption, for the reason that it puts the State upon an unjust and unequal basis, by making an odious and unjust discrimination between different kinds of property.

Mr. DuLONG. I understood the gentleman before as I do now, and I say again that he is in a Convention assisting to frame a Constitution which he intends to defeat—which he says he cannot vote for, and does not believe ought to be adopted.

Mr. NOURSE. And yet I have said I desire its adoption personally. So far as my own interest goes, I desire it, and if other people are fools enough to vote for and carry it, I shall be very glad of it.

Mr. DuLONG. Having drawn from the gentleman exactly the acknowledgment of his position which I wanted, I again insist, and I do not wish to do any gentleman injustice, that he is here engaged in framing a Constitution to be

defeated. And I will say further, that I believe nearly every member of this Convention who is earnestly in favor of having this Constitution adopted, and who intends to go before the people and ask their support for it, is in favor of retaining in the instrument this restrictive clause. And I say again, that if, without including the Territorial debt, a tax of one per cent., added to the right to borrow three hundred thousand dollars in the course of three years, will not be sufficient to pay the expenses of the State Government, then I am opposed to adopting a State Government, with any kind of Constitution. But I believe, and am confident, that it will do it.

Gentlemen on this floor have been clamoring against it in the face of figures which are incontrovertible, and have been putting propositions to other gentlemen as to what should be done if the taxable property amounted to only twenty millions, when they know that we have twenty-five millions of surface property, and have the proceeds of the mines besides, making, according to a fair statistical showing, an aggregate of taxable property in this Territory, now, of not less than forty millions of dollars. There is no getting around that, and it is increasing all the time. And yet, with that knowledge before them, simply because the old iron rankles in the wound, because the mines, whether property or not property, were not put into the schedule of property to be taxed, gentlemen get up here, and in opposing this restriction insist that one per cent. is not sufficient, because we have not more than twenty or twenty-five millions of taxable property. Thence alone comes this opposition, in my opinion.

Now, Mr. President, I hope to see this section retained right where it is. I believe that we have got forty millions of property now, and I believe it is not the fault of the law, but rather of the officers of the law, that taxes were not collected on fifteen millions of dollars, as the proceeds of the mines, last year. I expect that difficulty to be remedied hereafter, and I expect the proceeds of the mines to be taxed in good faith. And I tell gentlemen, here and elsewhere, when they express a desire to retain the present form of Government, because, as they say, more money will be derived from the taxation of the mines under the Territorial laws, than will be if we adopt a State Government, that they will see a Legislature sent here next winter, with our full and hearty concurrence, willing and ready to tax all the legitimate proceeds of the mines. And in doing that, we go as far as you can reasonably ask us, when you are looking to us for everything—when you depend upon us for every manner and description of business.

Sir, we do not want to see this eleventh hour manifestation of hostility. If gentlemen cannot support the Constitution we have framed, and do not intend to support it, let them not prevent us from making it as nearly perfect as we can. Act in good faith in regard to it, or do not act at all. When it was proposed to tax all classes of mines indiscriminately, I proposed to leave the Convention, for the reason that I could not, with an honest heart, say to the people that I recommended them to support such an instrument. I will not stay in this Convention, or in any other, and take part in the framing of an instrument which I intend to oppose.

Mr. NOURSE. I wish to rise to a question of privilege, because my position and motives have been misrepresented and assailed—my personal position and my personal motives. I wish to say this, in regard to the last remark of the gentleman from Storey, (Mr. DeLong,) that what time I have been in the Convention since its action on the subject of taxation, has only been, I believe, when I have been brought here by the Sergeant-at-Arms. But be that as it may, I have not deemed it necessary nor incumbent on me to withdraw from the Convention, as the gentleman from Storey threatened, if he could not carry out his wishes.

Mr. DeLONG. That is not so; I never threatened it.

Mr. NOURSE. Well, it sounded so much like it that I thought it was a threat. If the gentleman thinks it was not, very well.

Mr. BROSNAN. I rise to a question of order. The gentleman from Washoe has spoken once on this question.

Mr. NOURSE. I am speaking to a question of privilege.

The PRESIDENT. The gentleman having risen to a question of privilege, is at liberty to proceed.

Mr. NOURSE. In regard to my position on the adoption of the Constitution, I only say this, that personally it is for my advantage that the State Constitution shall be adopted. If I had an elastic conscience, I should probably vote for it very readily, because it will be money in my pocket to have it adopted. It will bring business to me in my profession. And I have stated, that notwithstanding I cannot vote for it myself, yet if the people shall be foolish enough to vote for and adopt it, I shall personally be very glad of it. The responsibility will then be theirs, not mine. It seems to me that when I have made that statement my position is clear enough. Whilst I cannot vote for the Constitution myself, whilst I think it is not for the interest of the people to adopt it, yet if the people shall deliberately take it upon themselves to adopt the Constitution and State Government, either with or without the taxation clause, I shall be satisfied with the result. I think I have shown, therefore, that my motives personally are to make the Constitution as acceptable, and as little injurious to the people, as possible. That is what I claim, and it is what my position shows in this matter, and if the gentleman from Storey still wishes to continue to impugn my motives, and to throw personal flings at me, why it only

shows the weakness of the cause for which he argues, when he has to abandon the fair, open ground of argument, to indulge in such personal flings.

Mr. COLLINS. This question has assumed perhaps a little more importance at the present time than it is entitled to. Still I will say that I cannot but sympathize with my colleagues from Storey County, when they affirm that if they cannot have a State Government which can be maintained, independent of the present indebtedness which we have provided that the State shall assume, upon a tax of one per cent. on all the taxable property of the State, then they are not in favor of a State Government. For one, I take the same position, and I think it is safe for me to say that in giving utterance to that sentiment I represent the opinion and feeling of a great many thousand voters among my constituents in Storey County. And, sir, I have been very much astonished to find that gentlemen who have been opposed, or at least who seemed to be opposed to this Constitution, and who have not been willing to make a positive declaration that they will support it, should seem to be disposed to saddle upon the Constitution that which will inevitably give it great unpopularity before the people.

Now so far as our present debt is concerned, about which we have heard so much, let us see what it amounts to. The sum total of the existing debt of the Territory is about $325,000. There is due to Reese, of San Francisco, $15,000; there is due to Parrott & Co., for bonds recently issued, $150,000; there is a balance due on the Curry bonds for the State Prison of $40,000. And these, together with the interest, make the amounts payable as follows: In 1865, the amount payable will be $59,500; in 1866, the amount payable will be $92,500; and in 1867, the amount payable will be $81,500. The sum total, of principal and interest, which must be paid in the three years is, therefore, $233,500, which leaves a considerable balance of the $300,000 of the indebtedness which the State has a right to contract.

And I maintain that the State is fully authorized to contract that indebtedness in order to pay the debt of the Territory, which it has assumed. The State is not bound to discharge at once, in its infancy, the entire debt which the Territory has been accumulating in the past, but may properly pay the interest only, leaving the principal until a future time, when the State shall become financially stronger. That, in my opinion, would be just and proper. Then, assuming that the State borrows $300,000, and pays the Territorial indebtedness, there will be a balance remaining of $66,500, and I ask if with that, and this proposed tax of one and a quarter per cent., there is not likely to be an ample amount of funds for carrying on the State Government? If that is not enough, let us remain in our present Territorial condition until we shall have grown sufficiently to be able to support our Government.

I have been astonished also to hear gentlemen deprecitating the value of the taxable property of this Territory. It has been assumed that for the year 1865, the taxable property of the Territory will not exceed twenty-five millions of dollars, but when gentlemen look over the Territory, and see the rapid increase of property that is going on, the erection of mills, the taking up and improvement of ranches, the building of houses and fences, and all the various appurtenances and appliances of civilized life, the opening up of our mines, and their rapidly increasing development; when they see the amount of bullion, the proceeds of our mines, which is daily shipped out of the State, they must be convinced that our taxable property is steadily and rapidly increasing, and to me it is, to say the least, a matter of astonishment to hear men of intelligence express the opinion that it will not have reached an aggregate of more than twenty-five millions in 1865. Sir, I am confident that in the year 1866, the taxable property of the Territory, or State, as the case may be, including the tax on the proceeds of the mines, will not amount to less than forty millions, and I shall be very greatly disappointed if, as early as 1867, it does not exceed fifty millions of dollars. And upon a taxable basis of forty millions, this rate of taxation of one and one-quarter per cent. will yield, allowing twenty-five per cent. for losses and cost of collecting, a revenue of $375,000 a year.

I ask, in Heaven's name, is not that enough? It seems to me it should suffice to satisfy even those who entertain the most extravagant ideas in regard to the cost of our State Government. I say, let us have a cheap Government. Let us tie the Legislature, and pin it down to a certain point of expenditure, and if the Legislature cannot economize so as to live within that limit, then let us not have a State Government. Why, sir, look at the difference between the expenditures of this Convention and those of the Convention of last year. Then we had an appropriation from the State, and of course it was all expended. This year we had nothing from the State Government, nor from the Federal Government, and still we get along with scarcely any expense. But suppose that Congress is passing the Enabling Act had given us twenty thousand dollars; does anybody doubt that we would have spent every dollar of it? And would we have finished our labors any sooner, or would we have had any better Constitution to submit to the people than we have now prepared? I think not. A man will always accommodate his expenses to his income, if he has common sense, and a legislative body will do the same. If we give our Legislature two hundred thousand dollars a year, and say it must run the State Government upon that amount, the thing will be accomplished; and on the other hand, if we should give the Legislature half a million or a million a year, it would be likely to spend the whole amount.

So if we were to bring the Legislature down to a hundred and fifty, or even a hundred and twenty thousand dollars a year, I have no doubt it would come to about the same thing in the end.

I repeat that I sympathize with my colleague, (Mr. Chapin,) and my other colleague, (Mr. DeLong,) when they tell the Convention that if a tax of one and one-fourth per cent. is not going to be adequate to support the State Government, then we had better remain in the Territorial condition, and if that can be shown to be a fact, then for one I am willing to canvass the Territory in favor of defeating the Constitution.

Mr. DeLONG. I rise to a question of privilege. The gentleman from Washoe (Mr. Nourse) says that I have impugned his motives, and accused him personally, and I now take occasion to deny the charge. The extent and summing up of all I said in relation to him is this: that, as I understood him, he is in the Convention helping and taking an active part in framing a Constitution which he intends to oppose. And in that I have done him no wrong, because he says so himself. He avows his intention to vote against the Constitution, although he will be glad if the people shall vote for it. And then I said, and I did not apply it to him at all, but only to myself, that according to my ideas of what would be proper action on my own part, I thought my duty was, whenever I found that I could not conscientiously vote for the instrument which the Convention is engaged in framing, to take part no longer in the creation of that instrument. I said that I had taken that view on a previous occasion, and the gentleman is in error when he says that I ever made a threat to leave the Convention if I could not have my peculiar views engrafted into the Constitution. I never did make such a threat, but I proposed to do just what I thought the gentleman from Washoe ought to have done heretofore: that is, when any provision was engrafted into the Constitution making it such an instrument that he could not vote for or recommend it, that moment I think he should have withdrawn.

Mr. COLLINS. I do not.

Mr. DeLONG. It was simply my own idea of what would be my own personal action, and I did not indulge in any "fling," or throw it out in that way at all. I merely said what my course of action was to have been on a previous occasion, and I should have followed out that course. I did not set up my example for the gentleman from Washoe, nor refer my remarks to him.

Now in regard to the section under consideration, I say this, that if we shall strike it out, at this last moment, that action will necessarily be regarded as the final expression of the opinion of this Convention, that we cannot support a State Government on a tax of one dollar and a quarter on each one hundred dollars of taxable property. And the people, with that understanding, knowing that their representatives, after having framed the instrument and carefully figured upon and considered it, had deliberately decided and determined that to limit the Legislature to a rate of annual taxation of one and one-quarter per cent., would be to establish a limit at so small a sum that it would be insufficient to meet the current expenses of the Government—the people, I say, under such circumstances, will vote down your Constitution almost unanimously, and I would not blame them. They will say that our own figures show that a tax of one and a quarter per cent. will not pay expenses, and they cannot stand under any heavier burden of taxation than that.

I do not think that there is any conflict between this section and the section in the article on Finance, to which reference has been made. We say in the general framework of the Constitution, that the Legislature shall levy certain taxes, sufficient for certain specified purposes. Then in the Schedule we say that for so many years the tax for State purposes shall not exceed a given rate per cent. The latter provision qualifies the former, and there can be no conflict at all.

Mr. McCLINTON. If I did not believe, honestly and conscientiously, that we can support the State Government on a tax of one and one-fourth per cent., levied upon the amount of property which we already have in the Territory, saying nothing of what we expect to have in the State hereafter—if I did not believe that would be amply sufficient, and more than sufficient, I should most undoubtedly vote against this proposition. But I have thoroughly canvassed the matter in my mind; I have turned it over and over, in every possible light, endeavoring to satisfy myself whether there is or is not so much property in the Territory now as will suffice, upon a tax of one dollar and a quarter on each one hundred dollars' worth of property, to raise a revenue sufficient for the support of the State Government, and for the liquidation of all the claims which will be brought against the State on account of the debts contracted by the Territory of Nevada, and assumed by the State; and I have convinced myself, fully and fairly, I believe, that we have sufficient resources, and more than sufficient, at that rate of taxation, to meet all demands against us. I shall therefore vote to retain the section under consideration.

I believe there is no man in the Convention more anxious for the adoption of a State Government than I am, although I am not, like my friend from Washoe, (Mr. Nourse,) interested personally. It is true that I have an interest to some extent, as every citizen has, but I mean to say, I am not aware that I shall be able, if I may use a rather common expression, to "make my bread and butter" any more easily in consequence of the adoption of the State Government, than I otherwise would. On the contrary, I do not know but I shall be really

a little out of pocket by it, for I may have to pay heavier taxes than I do now; but if that is the case I shall pay those taxes cheerfully, because I believe the State Government will be a benefit and a blessing to the people at large. In my judgment, the people of this Territory will be found almost unanimously in favor of a State Government, provided they can be convinced that it will not burden them with expenses greatly exceeding in amount those which they now bear, in supporting the Territorial form of Government. And I maintain that the Constitution which we have framed, and are about to adopt in this Convention, makes ample provision for carrying on this State Government on such an economical principle that our expenses will be scarcely perceptibly increased, if at all, beyond what they now are.

I am strongly of the opinion, sir, that the taxable property of the Territory, even at the present day, is not one farthing less, in the aggregate amount, than forty millions of dollars. But if it were less than that, suppose it to reach only thirty-two millions, including the proceeds of the mines, still I contend that a tax of one dollar and a quarter on every one hundred dollars worth of property, would provide an ample revenue for the support of the State Government, and also for the payment of the principal and interest of the Territorial debt. I am tired of this rat-trap of a Territorial Government, sir. I want a government of a more substantial character—one which will encourage the development of our rich mines and all our resources. I want to see the numerous valuable mines which are now locked up by litigation, unlocked, and developed as they should be, in order that their hidden stores of wealth may be brought forth and cast upon the commerce of the world. I want to see the two thousand men now idle in Storey County, as it has been stated, and scarcely possessing the wherewithal to obtain a living, once more in constant employment, and to accomplish that end I desire to see the Judiciary so reformed that the numerous causes now in litigation may be promptly disposed of, and the mining claims unlocked, and allowed to be developed. Then those strong men, now idle, can be put to work in the mines, earning their four dollars a day, and so obtaining an honest and honorable livelihood.

I can vote conscientiously against the proposition now before the Convention to strike out this section, for the reason that I am firmly convinced that the proposed rate of taxation will yield a revenue amply sufficient, and more than sufficient, to support the State Government. If I believed it would be no more than sufficient, rather than take the risk, I should vote against the restriction; but I believe it will be more than sufficient, leaving a fair margin for those expenditures which we cannot estimate with certainty, and therefore I shall vote to retain the section.

The PRESIDENT. The question is on the section of the gentleman from Nye (Mr. Proctor) to strike out the entire section. The Secretary will again read it, as now amended.

The SECRETARY read the section, as amended, as follows:

Sec. 24. For the first three years after the adoption of this Constitution the Legislature shall not levy a tax, for State purposes, exceeding one per cent. per annum on the taxable property in the State. Provided, the Legislature may levy a special tax not exceeding one-fourth of one per cent. per annum, which shall be appropriated to the payment of the indebtedness of the Territory of Nevada, assumed by the State of Nevada, and for that purpose only, until all of said indebtedness is paid.

The question was taken by yeas and nays, and the vote was—yeas, 7; nays, 14—as follows:

Yeas—Messrs. Crawford, Kirkland, Mason, Nourse, Proctor, Taylor, and Mr. President—7.

Nays—Messrs. Banks, Belden, Bowman, Chapin, Collins, Crosman, DeLong, Folsom, Gibson, Hawley, Kennedy, McClinton, Porter, and Wetherill—14.

So the Convention refused to strike out the section.

During the voting—

Mr. HAWLEY. I ask leave to explain my vote—only a moment. ["Leave, Leave!"] Upon the proposition to levy a tax of one dollar and a quarter upon each one hundred dollars of taxable property, for the purpose of carrying on this State Government, I find that the constituency I represent, or any one of them, would be required to pay taxes amounting in the aggregate to twenty-six dollars for each one thousand dollars worth of taxable property that he may possess. And that does not include the Federal tax. I am very certain that my action would meet with no approval from my constituents, if I were to give my consent to any proposition which, even by implication, would allow the Legislature to levy a State tax exceeding one dollar and a quarter on each one hundred dollars, for the next two or three years, in addition to the heavy taxes which we already have to pay in our county. I therefore cast my vote in the negative.

The result of the vote having been announced, as above given—

Mr. CROSMAN. I now move that the section be adopted.

The PRESIDENT. The section came up by a reconsideration. I am of opinion that the failure of the motion to strike out is equivalent to a vote to adopt. The motion should properly have been, I think, to adopt the section rather than to strike it out.

Mr. NOURSE. The refusal to strike out, I believe, is the adoption of the section.

The PRESIDENT. The vote may as well be taken, if there is no objection. The question is on the adoption of the section, as amended.

The question was taken, and the section was adopted.

The SECRETARY read Section 25, as follows:

Sec. 25. The County of Roop shall be attached to the

County of Washoe for judicial, legislative, revenue, and county purposes, until otherwise provided by law.

No amendment was proposed.

The PRESIDENT. The final revision of the Schedule is now completed; what is the pleasure of the Convention?

Mr. DeLONG. I move that the Convention adjourn.

The PRESIDENT. We shall be unable to assemble a quorum to-morrow, and the Election Ordinance remains to be read.

Mr. DeLONG. We can finish before ten o'clock in the morning; however, I withdraw the motion.

ELECTION ORDINANCE.

The Convention took up, on final revision, the Election Ordinance, providing for the election by the people upon the Constitution, and the voting of volunteers in the service of the United States at certain elections.

The SECRETARY read the preamble, and Sections 1 to 6, inclusive, as follows:

WHEREAS, The Enabling Act passed by Congress, and approved March 21st, A. D. 1864, requires that the Convention charged with the duty of framing a Constitution for a State Government "shall provide by ordinance for submitting said Constitution to the people of the Territory of Nevada for their ratification or rejection," on a certain day prescribed therein; therefore, this Convention, organized in pursuance of said Enabling Act, do establish the following

ORDINANCE.

SECTION 1. The Governor of the Territory of Nevada is hereby authorized to issue his proclamation for the submission of this Constitution to the people of said Territory, for their approval or rejection, on the day provided for such submission by Act of Congress, and this Constitution shall be submitted to the qualified electors of said Territory, in the several counties thereof, for their approval or rejection; and further, on the first Tuesday after the first Monday of November, A. D. 1864, there shall be a general election in the several counties of said Territory for the election of State officers, Supreme and District Judges, Members of the Legislature, Representative in Congress, and three Presidential Electors.

SEC. 2. All persons qualified by the laws of said Territory to vote for Representatives to the General Assembly on the said twenty-first day of March, including those in the army of the United States, both within and beyond the boundaries of said Territory, and also all persons who may by the aforesaid laws be qualified to vote on the —— day of ——, A. D. 1864, including those in the aforesaid army of the United States, within and without the boundaries of said Territory, may vote for the adoption or rejection of said Constitution on the day last above-named. In voting upon this Constitution, each elector shall deposit in the ballot-box a ticket, whereon shall be clearly written or printed "Constitution Yes," or "Constitution No," or such other words that shall clearly indicate the intention of the elector.

SEC. 3. All persons qualified by the laws of said Territory to vote on the Tuesday after the first Monday of November, A. D. 1864, including those in the army of the United States, within and beyond the boundaries of said Territory, may vote on the day last above-named for State officers, Supreme and District Judges, Members of the Legislature, Representative in Congress, and three Presidential Electors to the Electoral College.

SEC. 4. The elections provided in this ordinance shall be holden at such places as shall be designated by the Boards of Commissioners of the several counties in said Territory. The Judges and Inspectors of said elections shall be appointed by said Commissioners, and the said elections shall be conducted in conformity with the existing laws of said Territory in relation to holding the general elections.

SEC. 5. The Judges and Inspectors of said elections shall carefully count each ballot, immediately after said elections, and forthwith make duplicate returns thereof to the Clerks of the said County Commissioners of their respective counties; and said Clerks, within fifteen days after said elections, shall transmit an abstract of the votes, including the soldiers' votes, as herein provided, given for State officers, Supreme and District Judges, Representative in Congress, and three Presidential electors, inclosed in an envelope, by the most safe and expeditious conveyance, to the Governor of said Territory, marked "Election Returns."

SEC. 6. Upon the receipt of said returns, including those of the soldiers' vote, or within twenty days after the election, if said returns be not sooner received, it shall be the duty of the Board of Canvassers—to consist of the Governor, United States District Attorney, and Chief Justice of said Territory, or any two of them—to canvass the returns, both civil and military, in the presence of all who may wish to be present, and if a majority of all the votes given upon this Constitution shall be in the favor, the said Governor shall immediately publish an abstract of the same and make proclamation of the fact, in some newspaper in said Territory, and certify the same to the President of the United States, together with a copy of the Constitution and ordinances. The said Board of Canvassers, after canvassing the votes of the said November elections, shall issue certificates of election to such persons as were elected State officers, Judges of the Supreme and District Courts, Representative in Congress, and three Presidential electors. When the President of the United States shall issue his proclamation declaring this State admitted into the Union on an equal footing with the original States, this Constitution shall thenceforth be ordained and established as the Constitution of the State of Nevada.

The PRESIDENT. Are those words, "civil and military," necessary, in Section 6? It provides for canvassing the returns, "both civil and military."

Mr. COLLINS. I presume they are not required. I move to strike out the words "both civil and military."

The amendment was agreed to by unanimous consent.

Mr. DeLONG. There is considerable noise on this side of the room, and as I take an interest in this matter, I will ask to have Section 1 read again.

The SECRETARY again read Section 1.

The PRESIDENT. This section is not complete. It is necessary to insert "on the day provided by Act of Congress," or some words of like import, at the end of the first clause, before the words "and further." That will be a substitute for the date which we have heretofore stricken out.

Mr. COLLINS. Read it again, slowly.

The SECRETARY again read Section 1.

The PRESIDENT. I suggest that we insert the words, "at the time provided by such Act of Congress." Then it will read:

"And this Constitution shall be submitted to the qualified electors of said Territory, in the several counties thereof, for their approval or rejection, at the time provided by such Act of Congress."

Mr. COLLINS. I will offer that amendment.

The amendment was agreed to by unanimous consent.

The remaining sections of the Ordinance were read, as follows:

SEC. 7. For the purpose of taking the vote of the electors of said Territory who may be in the army of the United States, the Adjutant-General of said Territory shall, on or before the 20th day of August next following, make out a list in alphabetical order, and deliver the same to the Governor, of the names of all the electors, residents of said Territory, who shall be in the army of the United States, stating the number of the regiment, battalion, squadron, or battery to which he belongs, and also the county or township of his residence in said Territory.

SEC. 8. The Governor shall classify and arrange the aforesaid returned list, and shall make therefrom separate lists of the electors belonging to each regiment, battalion, squadron, and battery from said Territory in the service of the United States, and shall, on or before the fifteenth day of August following, transmit, by mail or otherwise, to the commanding officer of each regiment, battalion, squadron, and battery, a list of electors belonging thereto, which said list shall specify the name, residence, and rank of each elector and the company to which he belongs, if to any, and also the county and township to which he belongs, and in which he is entitled to vote.

SEC. 9. Between the hours of nine o'clock, A. M., and three o'clock, P. M., on each of the election days hereinbefore named, a ballot-box or suitable receptacle for votes shall be opened under the immediate charge and direction of three of the highest officers in command, for the reception of votes from the electors whose names are upon said list, at each place where a regiment, battalion, squadron, or battery of soldiers from said Territory in the army of the United States may be on that day; at which time and place said electors shall be entitled to vote for all officers for which by reason of their residence in the several counties in said Territory they are authorized to vote, as fully as they would be entitled to vote in the several counties or townships in which they reside, and the votes so given by such electors, at such time and place, shall be considered, taken, and held to have been given by them in the respective counties and townships in which they are resident.

SEC. 10. Each ballot deposited for the adoption or rejection of this Constitution, in the army of the United States, shall have distinctly written or printed thereon, "Constitution—Yes," or "Constitution—No;" or words of a similar import; and further, for the election of State officers, Supreme and District Judges, members of the Legislature, Representative in Congress, and three Presidential Electors, the name and office of the person voted for shall be plainly written or printed on one piece of paper. The name of each elector voting as aforesaid shall be checked upon the said list at the time of voting by one of the said officers having charge of the ballot-box. The said officers having charge of the election shall count the votes, and compare them with the checked list, immediately after the closing of the ballot-box.

SEC. 11. All the ballots cast, together with the said voting list checked as aforesaid, shall be immediately sealed up and sent forthwith to the Governor of said Territory, at Carson City, by mail or otherwise, by the commanding officer, who shall also make out and certify duplicate returns of votes given according to the forms hereinafter described, seal up and immediately transmit the same to the said Governor at Carson City, by mail or otherwise, the day following the transmission of the ballots and the voting list herein named. The said commanding officer shall also immediately transmit to the several County Clerks in said Territory an abstract of the votes given at the general election in November, for county officers, marked "Election Returns."

SEC. 12. The form of returns of votes to be made by the commanding officer to the Governor and County Clerks of said Territory, shall be in substance as follows, viz:

Returns of soldiers' votes in the (here insert the regiment, detachment, battalion, squadron, or battery.)

(For first election—On the Constitution:)

I, ——, hereby certify that on the —— A. D. 1864, the electors belonging to the (here insert the name of the regiment, detachment, battalion, squadron, or battery,) cast the following number of votes for and against the Constitution for the State of Nevada, viz:

For Constitution—(number of votes written in full and in figures.)

Against Constitution—(number of votes written in full and in figures.)

(Second election—For State and other officers:)

I, ——, hereby certify that on the first Tuesday after the first Monday in November, A. D. 1864, the electors belonging to the (here insert as above,) cast the following number of votes for the several officers and persons hereinafter named, viz:

For Governor—(names of persons voted for, number of votes for each person voted for written in full, and also in figures, against the name of each person.)

For Lieutenant-Governor—(name of candidates, number of votes cast for each written out, and in figures, as above.)

(Continue as above until the list is completed.)

Attest: I. A. B.,

Commanding officer of the (here insert regiment, detachment, battalion, squadron, or battery, as the case may be.)

SEC. 13. The Governor of this Territory is requested to furnish each commanding officer within and beyond the boundaries of said Territory, proper and sufficient blanks for said returns.

SEC. 14. The provisions of this ordinance in regard to the soldiers' vote shall apply to future elections under this Constitution, and be in full force until the Legislature shall provide by law for taking the votes of citizens of said Territory in the army of the United States.

No further amendment was proposed.

The PRESIDENT. Has the gentleman from Nye (Mr. Proctor) any report to make from the Governor, concerning the day of voting on the Constitution?

Mr. PROCTOR. Not yet.

PUBLICATION OF THE CONSTITUTION.

Mr. CHAPIN. While we are waiting for information from the Governor, I desire to offer a resolution which I think is necessary, inasmuch as a committee has been appointed to take charge of the official publication of the Constitution.

The resolution was read, as follows:

Resolved, That the Committee on Re-enrollment be directed to furnish the Committee on Publication and Distribution, with a certified copy of the Constitution, as soon as the same can be prepared.

The question was taken, and the resolution was adopted.

ENGROSSMENT OF THE JOURNAL.

Mr. BROSNAN. I believe it is customary to provide for the preservation of the Journals of Conventions of this kind, and I therefore offer the following resolution:

Resolved, That in the event of the adoption of this Constitution, the Secretary of this Convention be, and he is hereby directed to engross, on Supreme Court paper, the Journals of this Convention, in order that they may be bound, and that for such services, as well as for engrossing copies of the Constitution provided to be transmitted to Washington, he shall receive —— cents per folio, to be paid in the same manner as the salaries of the attaches of this Convention.

Mr. DELONG. I move to insert the word "hide," before "bound." [Laughter.]

Mr. NOURSE. I want to insert a proviso that the Secretary's compensation shall not exceed one per cent. of all the taxable property of the State. [Laughter.] Would the Secretary do the work for —— bonds?

Mr. COLLINS. Do not let us make nonsense of it.

Mr. BANKS. We must fill the blank, I suppose. The price paid for enrolling, I understand, is thirty cents per folio.

Mr. BROSNAN. I will insert in the blank the word "thirty."

The question was taken, and the resolution, as modified, was adopted.

THE ELECTION ORDINANCE—AGAIN.

Mr. BANKS. Has the Election Ordinance been finally considered?

The PRESIDENT. It was passed some time ago.

Mr. BANKS. I did not hear the final vote taken; were any corrections made?

The PRESIDENT. Yes, sir; in the usual manner; there being no objection.

Mr. BANKS. Has any reply been received to the telegrams sent by the Governor relative to the day of the election on the Constitution?

The PRESIDENT. I have made inquiry, and learn that at the time of the meeting of the Convention this evening, the Governor had received no reply. Some blanks were necessarily left in the Election Ordinance, as it was passed on a previous day, and we have provided in Section 1, that the Constitution shall be submitted at the time designated by Act of Congress. That is all the Convention can do in regard to the matter.

FINAL ADOPTION OF THE CONSTITUTION.

Mr. PROCTOR. Before the reading of the Journal of to-day's proceedings, should we not take a final vote on the adoption of the Constitution as a whole, as now amended?

Mr. DELONG. I think the suggestion is a good one. I move the adoption of the entire Constitution, Resolution, and Ordinances, as a whole, and ask for the yeas and nays.

The question was taken by yeas and nays, and the vote was—yeas, 19; nays, 2—as follows:

Yeas—Messrs. Banks, Belden, Brosnan, Chapin, Collins, Crosman, DeLong, Folsom, Gibson, Hawley, Kennedy, Kinkead, Mason, McClinton, Parker, Proctor, Tagliabue, Wetherill, and Mr. President—19.

Nays—Messrs. Crawford and Nourse—2.

So the Constitution, Resolution, and Ordinances, were finally adopted by the Convention.

Mr. HAWLEY. Now I call for the reading of the Journal.

The Journal of to-day's proceedings, up to the present time, was read and approved.

Several facetious motions and resolutions were submitted, producing considerable merriment.

EXTRA SERVICE OF SECRETARY.

Mr. KINKEAD. There will necessarily be a day or two, perhaps more, after the adjournment, that the Secretary will be occupied in writing up his Journal, and attending to various matters connected with his duties. I will therefore submit a motion that he be allowed, for such time as may be necessary, the same per diem as during the session, to be certified by the President.

The PRESIDENT. A certified copy of the Constitution, as enrolled, has to be furnished to the printer.

Mr. BROSNAN. Is not the copy we have been using sufficient, as it has to be re-enrolled? Compositors, as is well known, can read almost anything.

Mr. KINKEAD. I think so; that copy has to be used for the re-enrollment.

The PRESIDENT. The question is on the motion of the gentleman from Ormsby, (Mr. Kinkead.) The Secretary will read it.

The SECRETARY read, as follows:

Resolved, That the Secretary be allowed the same per diem, for such number of days as he shall be necessarily engaged in writing up the Journals, to be certified to by the President, as is prescribed by the resolution fixing the pay of the attaches.

The question was taken, and the resolution was adopted.

EXTRA PAY.

Mr. BANKS. I move to reconsider the vote by which the Convention increased the compensation of certain officers and attaches of the Convention, and I will state my reasons very briefly. I might with propriety say a great deal in commendation of the manner in which the duties of their various positions have been performed, but nevertheless I regret exceedingly that in the starting out of our new State Government we should establish so bad a precedent. I know the motion is not altogether parliamentary, perhaps, and it may not be acceptable to many gentlemen who are friends of the officers and attaches, nor to themselves, but for one I cannot consent, if I can help it, to allow this Convention to set so pernicious an example.

The question was taken on the motion to reconsider, and on a division the vote was—yeas, 7; nays, 12. So the Convention refused to reconsider.

THANKS TO THE PRESIDENT.

[Mr. COLLINS in the chair.]

Mr. HAWLEY offered the following preamble and resolutions:

WHEREAS, The second Constitutional Convention of the Territory of Nevada is now about to adjourn. Therefore, be it unanimously

Resolved, That the thanks of the members of this Convention are hereby tendered to the Hon. J. NEELY JOHNSON, President of the Convention, for the able, impartial, and courteous manner in which he has discharged the duties of his position.

Resolved, That the members of this Convention take leave of the President with the kindest memories of their past intercourse, and their warmest wishes for his future prosperity.

Mr. HAWLEY. I feel that nothing I can say would add strength or force to these resolutions, which are offered in a spirit of the profoundest sincerity. I earnestly hope and trust that they will meet with the unanimous approval of the gentlemen composing this Convention. By their adoption we shall only be doing justice to ourselves, as well as justice—in part, at least—to the distinguished gentleman who has presided so ably over our deliberations. [Applause.]

The question was taken, and the preamble and resolutions were unanimously adopted.

THANKS TO OFFICERS AND ATTACHES.

[The PRESIDENT in the chair.]

Mr. KINKEAD offered the following resolution:

Resolved, That the members of this Convention hereby return their thanks to the Secretary and other attaches of this Convention, for the faithful discharge of the duties of their several offices.

Mr. DeLONG. How is that; "the Secretary and other attaches?" That requires some modification.

Mr. BANKS. It is a matter perhaps of no great consequence; still, if I occupied the position of the "others," I would like to be designated a little more plainly. I understand that the Secretary, and the Assistant Secretary of the Convention, and also the Official Reporter, are included among the officers of the Convention, and then the others may be designated as attaches. I would like to get the resolution in proper form, and the attaches are not usually classed with the other officers. I suggest that the resolution be amended so as to specify the Secretary, Assistant Secretary, and Official Reporter, and then the others as attaches.

Mr. KINKEAD. I will accept the amendment with great pleasure.

Mr. BANKS. After examining the resolution, I will move to amend it so as to read: "the officers and attaches of this Convention," instead "of the Secretary and other attaches;" that will include them all. The resolution will then read as follows:

Resolved, That the members of this Convention hereby return their thanks to the officers and attaches of this Convention, for the faithful discharge of the duties of their several offices.

Mr. KINKEAD. I accept the amendment.

The question was taken, and the resolution, as modified, was adopted unanimously.

The journal of this evening's session was read and approved.

ADJOURNMENT SINE DIE.

Mr. CROSMAN. I move that the Convention adjourn, *sine die*, inasmuch as our labors are completed.

The question was taken, and the motion was agreed to.

Before announcing the result of the vote—

CLOSING REMARKS OF THE PRESIDENT.

The PRESIDENT. Gentlemen of the Convention:—The time has arrived when, having concluded the important labors for which we were convened, we are about to separate, and return to our several homes. Anxiously as we have desired this moment, it nevertheless brings with it feelings of sadness, for we are about to part, probably never, all of us, again to meet together on earth.

When I entered upon the duties of your presiding officer, gentlemen, I promised you that I would endeavor to discharge the duties of that trust with impartiality, and I can conscientiously say, that during the sessions of our body I have earnestly sought to discharge those duties. And I feel that I can receive the very flattering resolution of thanks which you have adopted, as at least an earnest and sincere expression of your judgment as to the manner in which I have fulfilled your expectations, and my promise. In discharging the exacting duties of this position, I have labored under much embarrassment. I brought to the position but little of parliamentary knowledge or legislative experience, and, having no written rules for the government of our Convention, we have been compelled to rely upon the manual which was adopted as our guide, and which was not at all times strictly applicable to the varied questions which necessarily arose in the Convention. Hence I have oftentimes found myself perplexed, and in some instances have unquestionably made rulings which did not receive the approval of your judgment. Be that as it may, I have been at all times actuated solely by a desire to make no rulings but such as would be in conformity with the usages and practice of parliamentary bodies.

During our proceedings we have had much to congratulate ourselves upon, and but little, if anything at all, to recur to at this time with regret. We have passed through the few weeks of our deliberations, without the angel of death having entered the portals of the Convention, and with an absence even of any serious illness, such as visited the preceding Convention. For these mercies we should return our grateful thanks to a beneficent Providence.

It is to be regretted that we have not had a full attendance of members, owing to circumstances which we could not control, but nevertheless, in much less time than that consumed by members of the former Convention, we have prepared with exceeding great care a Constitution to be submitted to the people of this Territory, for their approval or rejection—a Constitution which, in my opinion, in all its essential features, will commend itself to the favorable judgment of the people. And even should their judgment be adverse at this time to its adoption, we shall have this upon which

to congratulate ourselves, that although the result of our labors be not now adopted, it will nevertheless serve as a basis for the action of some future Convention, as the labors of our predecessors have served as the basis of our action.

Gentlemen, in bidding you good-bye, allow me to say that you carry with you, each and every one, my cordial sympathies in your future welfare, my sincere wishes for your continued prosperity. And I join with you, gentlemen, in the ardent hope that the labors which have brought us together, and which are now happily ended, may culminate in the advantage of the people of the new State of Nevada, for the government of which we have laid the foundation.

Gentlemen, I now declare this Convention adjourned *sine die*.

Accordingly, at five minutes past twelve o'clock, midnight, the Convention adjourned, *sine die*.

CONSTITUTION

OF THE

STATE OF NEVADA,

AS ADOPTED IN CONVENTION, AND RATIFIED BY THE PEOPLE.

CONSTITUTION

OF THE

STATE OF NEVADA.

CONSTITUTION.

PRELIMINARY ACTION.

WHEREAS, The Act of Congress, approved March twenty-first, A. D. eighteen hundred and sixty-four, "To Enable the People of the Territory of Nevada to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States," requires that the members of the Convention for framing said Constitution shall, after organization, on behalf of the people of said Territory, adopt the Constitution of the United States, therefore, be it

Resolved, That the members of this Convention, elected by the authority of the aforesaid Enabling Act of Congress, as assembled in Carson City, the Capital of said Territory of Nevada, and immediately subsequent to its organization, do adopt, on behalf of the people of said Territory, the Constitution of the United States.

ORDINANCE.

In obedience to the requirements of an Act of the Congress of the United States, approved March twenty-first, A. D. eighteen hundred and sixty-four, to enable the people of Nevada to form a Constitution and State Government, this Convention, elected and convened in obedience to said Enabling Act, do ordain as follows—and this ordinance shall be irrevocable, without the consent of the United States and the people of the State of Nevada:

First—That there shall be in this State neither slavery nor involuntary servitude, otherwise than in the punishment for crimes, whereof the party shall have been duly convicted.

Second—That perfect toleration of religious sentiment shall be secured, and no inhabitant of said State shall ever be molested, in person or property, on account of his or her mode of religious worship.

Third—That the people inhabiting said Territory do agree and declare, that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that lands belonging to citizens of the United States, residing without the said State, shall never be taxed higher than the land belonging to residents thereof; and that no taxes shall be imposed by said State on lands or property therein belonging to, or which may hereafter be purchased by, the United States.

PREAMBLE.

We, the People of the State of Nevada, grateful to Almighty God for our freedom, in order to secure its blessings, insure domestic tranquillity, and form a more perfect Government, do establish this

CONSTITUTION.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. All men are, by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the pro-

tection, security, and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. But the paramount allegiance of every citizen is due to the Federal Government, in the exercise of all its constitutional powers, as the same have been, or may be, defined by the Supreme Court of the United States, and no power exists in the people of this or any other State of the Federal Union to dissolve their connection therewith, or perform any act tending to impair, subvert, or resist the supreme authority of the Government of the United States. The Constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whensoever any portion of the States, or the people thereof, attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by warrant of the Constitution, employ armed force in compelling obedience to its authority.

SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law; and in civil cases, if three-fourths of the jurors agree upon a verdict, it shall stand, and have the same force and effect as a verdict by the whole jury; *provided*, the Legislature, by a law passed by a two-thirds vote of all the members elected to each branch thereof, may require a unanimous verdict, notwithstanding this provision.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of his religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

SEC. 5. The privilege of the writ of *habeas corpus* shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require its suspension.

SEC. 6. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted; nor shall witnesses be unreasonably detained.

SEC. 7. All persons shall be bailable by sufficient sureties; unless for capital offenses, when the proof is evident, or the presumption great.

SEC. 8. No person shall be tried for a capital or other infamous crime, (except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the Legislature,) except on presentment or indictment of a grand jury; and in any trial in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation having been first made or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions, and civil actions for libels, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted or exonerated.

SEC. 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

SEC. 11. The military shall be subordinate to the civil power. No standing army shall be maintained by this State in time of peace, and in time of war no appropriation for a standing army shall be for a longer time than two years.

SEC. 12. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in the manner to be prescribed by law.

SEC. 13. Representation shall be apportioned according to population.

SEC. 14. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for payment of any debts or liabilities hereafter contracted; and there shall be no imprisonment for debt, except in cases of fraud, libel, or slander, and no person shall be imprisoned for a militia fine in time of peace.

SEC. 15. No bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.

SEC. 16. Foreigners who are, or who may hereafter become, *bona fide* residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.

SEC. 17. Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.

SEC. 18. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.

SEC. 19. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. And no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 20. This enumeration of rights shall not be construed to impair or deny others retained by the people.

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION 1. Every white male citizen of the United States, (not laboring under the disabilities named in this Constitution,) of the age of twenty-one years and upwards, who shall have actually and not constructively resided in the State six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now are or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; *provided*, that no person who has been or may be convicted of treason or felony in any State or Territory of the United States, unless restored to civil rights, and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government, and no idiot or insane person shall be entitled to the privilege of an elector.

SEC. 2. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

SEC. 3. The right of suffrage shall be enjoyed by all persons otherwise entitled to the same who may be in the military or naval service of the United States; *provided*, the votes so cast shall be made to apply to the county and township of which said voters were *bona fide* residents at the time of their enlistment; and, *provided further*, that the payment of a poll tax or a registration of such voters shall not be required as a condition to the right of voting. Provision shall be made by law regulating the manner of voting, holding elections, and making returns of such elections, wherein other provisions are not contained in this Constitution.

SEC. 4. During the day on which any general election shall be held in this State, no qualified elector shall be arrested by virtue of any civil process.

SEC. 5. All elections by the people shall be by ballot, and all elections by the Legislature, or by either branch thereof, shall be *viva voce*.

SEC. 6. Provision shall be made by law for the registration of the names of the electors within the counties of which they may be residents, and for the ascertainment, by proper proofs, of the persons who shall be entitled to the right of suffrage, as hereby established, to preserve the purity of elections, and to regulate the manner of holding and making returns

of the same; and the Legislature shall have power to prescribe by law any other or further rules or oaths as may be deemed necessary, as a test of electoral qualification.

SEC. 7. The Legislature shall provide by law for the payment of an annual poll tax of not less than two nor exceeding four dollars from each male person resident in the State, between the ages of twenty-one and sixty years, (uncivilized American Indians excepted,) one half to be applied for State, and one half for county purposes; and the Legislature may, in its discretion, make such payment a condition to the right of voting.

SEC. 8. All persons qualified by law to vote for representatives to the General Assembly of the Territory of Nevada on the twenty-first day of March, A. D. eighteen hundred and sixty-four, and all other persons who may be lawful voters in said Territory on the first Wednesday of September next following, shall be entitled to vote directly upon the question of adopting or rejecting this Constitution.

ARTICLE III.

DISTRIBUTION OF POWERS.

SECTION 1. The powers of the Government of the State of Nevada shall be divided into three separate departments—the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SECTION 1. The Legislative authority of this State shall be vested in a Senate and Assembly, which shall be designated "The Legislature of the State of Nevada," and the sessions of such Legislature shall be held at the seat of government of the State.

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday of January next ensuing the election of members of the Assembly, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation.

SEC. 3. The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November, and their term of office shall be two years from the day next after their election.

SEC. 4. Senators shall be chosen at the same time and places as members of the Assembly, by the qualified electors of their respective districts, and their term of office shall be four years from the day next after their election.

SEC. 5. Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one-third nor more than one-half of that of the members of the Assembly.

SEC. 6. Each House shall judge of the qualifications, elections and returns of its own members, choose its own officers, (except the President of the Senate,) determine the rules of its proceedings, and may punish its members for disorderly conduct, and, with the concurrence of two-thirds of all the members elected, expel a member.

SEC. 7. Either House, during the session, may punish, by imprisonment, any person not a member who shall have been guilty of disrespect to the House by disorderly or contemptuous behavior in its presence; but such imprisonment shall not extend beyond the final adjournment of the session.

SEC. 8. No Senator or member of Assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections by the people.

SEC. 9. No person holding any lucrative office under the Government of the United States, or any other power, shall be eligible to any civil office of profit under this State; provided, that Postmasters whose compensation does not exceed five hundred dollars per annum, or Commissioners of Deeds, shall not be deemed as holding a lucrative office.

SEC. 10. Any person who shall be convicted of the embezzlement or defalcation of the public funds of this State, or who may be convicted of having given or offered a bribe to procure his election or appointment to office, or received a bribe to aid in the procurement of office for

any other person, shall be disqualified from holding any office of profit or trust in this State; and the Legislature shall, as soon as practicable, provide by law for the punishment of such defalcation, bribery, or embezzlement, as a felony.

SEC. 11. Members of the Legislature shall be privileged from arrest on civil process during the session of the Legislature, and for fifteen days next before the commencement of each session.

SEC. 12. When vacancies occur in either House, the Governor shall issue writs of election to fill such vacancy.

SEC. 13. A majority of all the members elected to each House shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each House may prescribe.

SEC. 14. Each House shall keep a journal of its own proceedings, which shall be published, and the yeas and nays of the members of either House on any question shall, at the desire of any three members present, be entered on the journal.

SEC. 15. The doors of each House shall be kept open during its session, except the Senate while sitting in Executive Session; and neither shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be holding their sessions.

SEC. 16. Any bill may originate in either House of the Legislature, and all bills passed by one may be amended in the other.

SEC. 17. Each law enacted by the Legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the act as revised, or section as amended, shall be re-enacted and published at length.

SEC. 18. Every bill shall be read by sections on three several days in each House, unless in case of emergency two-thirds of the House where such bill may be pending shall deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on the final passage of every bill or joint resolution shall be taken by yeas and nays, to be entered on the journals of each House; and a majority of all the members elected to each House shall be necessary to pass every bill or joint resolution, and all bills or joint resolutions so passed shall be signed by the presiding officers of the respective Houses, and by the Secretary of the Senate and Clerk of the Assembly.

SEC. 19. No money shall be drawn from the Treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at every regular session of the Legislature.

SEC. 20. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of Justices of the Peace and of Constables:

For the punishment of crimes and misdemeanors:

Regulating the practice of Courts of Justice:

Providing for changing the venue in civil and criminal cases:

Granting divorces:

Changing the names of persons:

Vacating roads, town plots, streets, alleys, and public squares:

Summoning and empanneling grand and petit juries and providing for their compensation:

Regulating county and township business:

Regulating the election of county and township officers:

For the assessment and collection of taxes for State, county, and township purposes:

Providing for opening and conducting elections of State, county, or township officers, and designating the places of voting:

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities.

SEC. 21. In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

SEC. 22. Provision may be made by general law for bringing suit against the State, as to all

liabilities originating after the adoption of this Constitution.

SEC. 23. The enacting clause of every law shall be as follows: "The People of the State of Nevada, represented in Senate and Assembly, do enact as follows;" and no law shall be enacted except by bill.

SEC. 24. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

SEC. 25. The Legislature shall establish a system of county and township government, which shall be uniform throughout the State.

SEC. 26. The Legislature shall provide by law for the election of a Board of County Commissioners in each county, and such County Commissioners shall, jointly and individually, perform such duties as may be prescribed by law.

SEC. 27. Laws shall be made to exclude from serving on juries, all persons not qualified electors of this State, and all persons who shall have been convicted of bribery, perjury, forgery, larceny, or other high crimes, unless restored to civil rights; and laws shall be passed regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 28. No money shall be drawn from the State Treasury as salary or compensation to any officer or employé of the Legislature, or either branch thereof, except in cases where such salary or compensation has been fixed by a law in force prior to the election or appointment of such officer or employé, and the salary or compensation so fixed shall neither be increased nor diminished so as to apply to any officer or employé of the Legislature, or either branch thereof, at such session; *provided*, that this restriction shall not apply to the first session of the Legislature.

SEC. 29. The first regular session of the Legislature, under this Constitution, may extend to ninety days, but no subsequent regular session shall exceed sixty days, nor any special session, convened by the Governor, exceed twenty days.

SEC. 30. A homestead, as provided by law, shall be exempt from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon; *provided*, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife; and laws shall be enacted providing for the recording of such homestead within the county in which the same shall be situated.

SEC. 31. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife in relation, as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

SEC. 32. The Legislature shall provide for the election, by the people, of a Clerk of the Supreme Court, County Clerks, County Recorders—who shall be, *ex officio*, County Auditors—District Attorneys, Sheriffs, County Surveyors, Public Administrators, and other necessary officers, and fix, by law, their duties and compensation. County Clerks shall be, *ex officio*, Clerks of the Courts of Record, and of the Boards of County Commissioners, in and for their respective counties.

SEC. 33. The members of the Legislature shall receive for their services, a compensation to be fixed by law, and paid out of the public treasury; but no increase of such compensation shall take effect during the term for which the members of either House shall have been elected; *provided*, that an appropriation may be made for the payment of such actual expenses as members of the Legislature may incur for postage, express charges, newspapers, and stationery, not exceeding the sum of sixty dollars for any general or special session, to each member; *and, furthermore provided*, that the Speaker of the Assembly, and Lieutenant-Governor as President of the Senate, shall each, during the time of their actual attendance as such presiding officers, receive an additional allowance of two dollars per diem.

SEC. 34. In all elections for United States Senators, such elections shall be held in joint

convention of both Houses of the Legislature. It shall be the duty of the Legislature which convenes next preceding the expiration of the term of such Senator to elect his successor. If a vacancy in such Senatorial representation, from any cause occur, it shall be the duty of the Legislature then in session, or at the succeeding session thereof, to supply such vacancy. If the Legislature shall, at any time as herein provided, fail to unite in a joint convention within twenty days after the commencement of the session of the Legislature, for the election of such Senator, it shall be the duty of the Governor, by proclamation, to convene the two Houses of the Legislature in joint convention within not less than five days, nor exceeding ten days, from the publication of his proclamation; and the joint convention, when so assembled, shall proceed to elect the Senator as herein provided.

SEC. 35. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which House shall cause such objections to be entered upon its journal, and proceed to reconsider it. If, after such reconsideration, it again pass both Houses by yeas and nays, by a vote of two-thirds of the members elected to each House, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within five days after it shall have been presented to him, (Sunday excepted,) exclusive of the day on which he received it, the same shall be a law in like manner as if he had signed it, unless the Legislature, by its final adjournment, prevent such return; in which case it shall be a law, unless the Governor, within ten days next after the adjournment, (Sundays excepted,) shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the Legislature at its next session, in like manner as if it had been returned by the Governor; and if the same shall receive the vote of two thirds of the members elected to each branch of the Legislature, upon a vote taken by yeas and nays, to be entered upon the journals of each House, it shall become a law.

ARTICLE V.

EXECUTIVE DEPARTMENT.

SECTION 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be Governor of the State of Nevada.

SEC. 2. The Governor shall be elected by the qualified electors at the time and places of voting for members of the Legislature, and shall hold his office for four years from the time of his installation, and until his successor shall be qualified.

SEC. 3. No person shall be eligible to the office of Governor who is not a qualified elector, and who, at the time of such election, has not attained the age of twenty-five years, and who, except at the first election under the Constitution, shall not have been a citizen resident of this State for two years next preceding the election.

SEC. 4. The returns of every election for Governor, and other State officers voted for at the general election, shall be sealed up and transmitted to the seat of government, directed to the Secretary of State; and on the third Monday of December succeeding such election, the Chief Justice of the Supreme Court, and the Associate Justices, or a majority thereof, shall meet at the office of the Secretary of State, and open and canvass the election returns for Governor and all other State officers, and forthwith declare the result and publish the names of the persons elected. The persons having the highest number of votes for the respective offices shall be declared elected; but in case any two or more have an equal and the highest number of votes for the same office, the Legislature shall, by joint vote of both houses, elect one of said persons to fill said office.

SEC. 5. The Governor shall be Commander-in-Chief of the military forces of this State, except when they shall be called into the service of the United States.

SEC. 6. He shall transact all executive business with the officers of the government, civil and military, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

SEC. 7. He shall see that the laws are faithfully executed.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission, which shall expire at the next election and qualification of the person elected to such office.

SEC. 9. The Governor may, on extraordinary occasions, convene the Legislature, by proclamation, and shall state to both houses, when organized, the purpose for which they have been convened; and the Legislature shall transact no legislative business except that for which they were specially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in session.

SEC. 10. He shall communicate, by message, to the Legislature, at every regular session, the condition of the State, and recommend such measures as he may deem expedient.

SEC. 11. In case of a disagreement between the two houses, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

SEC. 12. No person shall, while holding any office under the United States Government, hold the office of Governor, except as herein expressly provided.

SEC. 13. The Governor shall have the power to suspend the collection of fines and forfeitures, and grant reprieves for a period not exceeding sixty days, dating from the time of conviction, for all offenses, except in cases of impeachment. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. And if the Legislature shall fail or refuse to make final disposition of such case, the sentence shall be enforced at such time and place as the Governor, by his order, may direct. The Governor shall communicate to the Legislature, at the beginning of every session, every case of fine or forfeiture remitted, or reprieve, pardon, or commutation granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, and the date of the remission, commutation, pardon, or reprieve.

SEC. 14. The Governor, Justices of the Supreme Court, and Attorney-General, or a major part of them, of whom the Governor shall be one, may, upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments, and grant pardons, after convictions, in all cases, except treason and impeachments, subject to such regulations as may be provided by law relative to the manner of applying for pardons.

SEC. 15. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of Nevada."

SEC. 16. All grants and commissions shall be in the name and by the authority of the State of Nevada, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 17. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner as the Governor, and his term of office, and his eligibility shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of the office, or be absent from the State, the President *pro tempore* of the Senate shall act as Governor, until the vacancy be filled or the disability cease.

SEC. 18. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, and at the head of any military force thereof, he shall continue Commander-in-Chief of the military forces of the State.

SEC. 19. A Secretary of State, a Treasurer, a Controller, a Surveyor-General, and an Attorney-General, shall be elected at the same time

and places, and in the same manner as the Governor. The term of office of each shall be the same as is prescribed for the Governor. Any elector shall be eligible to either of said offices.

SEC. 20. The Secretary of State shall keep a true record of the official acts of the Legislative and Executive Departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature.

SEC. 21. The Governor, Secretary of State, and Attorney-General shall constitute a Board of State Prison Commissioners, which Board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall also constitute a Board of Examiners, with power to examine all claims against the State, (except salaries or compensation of officers fixed by law,) and perform such other duties as may be prescribed by law. And no claim against the State (except salaries or compensation of officers fixed by law) shall be passed upon by the Legislature, without having been considered and acted upon by said "Board of Examiners."

SEC. 22. The Secretary of State, State Treasurer, State Controller, Surveyor-General, Attorney-General, and Superintendent of Public Instruction, shall perform such other duties as may be prescribed by law.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The Judicial power of this State shall be vested in a Supreme Court, District Courts, and in Justices of the Peace. The Legislature may also establish Courts for municipal purposes only, in incorporated cities and towns.

SEC. 2. The Supreme Court shall consist of a Chief Justice and two Associate Justices, a majority of whom shall constitute a quorum; *provided*, that the Legislature, by a majority of all the members elected to each branch thereof, may provide for the election of two additional Associate Justices, and if so increased, three shall constitute a quorum. The concurrence of a majority of the whole Court shall be necessary to render a decision.

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at the general election, and shall hold office for the term of six years from and including the first Monday of January next succeeding their election; *provided*, that there shall be elected, at the first election under this Constitution, three Justices of the Supreme Court, who shall hold office from and including the first Monday of December, A. D. eighteen hundred and sixty-four, and continue in office thereafter two, four, and six years, respectively from and including the first Monday of January next succeeding their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall determine, by lot, the term of office each shall fill, and the Justice drawing the shortest term shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the senior Justice in commission shall be Chief Justice. And in case the commission of any two or more of said Justices shall bear the same date, they shall determine by lot who shall be Chief Justice.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also, in all cases at law in which is involved the title or right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, (exclusive of interest,) or the value of the property in controversy exceeds three hundred dollars; also, in all other civil cases not included in the general sub-division of law and equity, and also, on questions of law alone, in all criminal cases in which the offense charged amounts to felony. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, and, also, all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by, or on behalf of, any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any District Court in the State, or before any Judge of said Courts.

SEC. 5. The State is hereby divided into nine Judicial Districts, of which the County of Storey shall constitute the first; the County of

Ormsby the second; the County of Lyon the third; the County of Washoe the fourth; the Counties of Nye and Churchill the fifth; the County of Humboldt the sixth; the County of Lander the seventh; the County of Douglas the eighth; and the County of Esmeralda the ninth. The County of Roop shall be attached to the County of Washoe for judicial purposes, until otherwise provided by law. The Legislature may, however, provide by law for an alteration in the boundaries or divisions of the districts herein prescribed, and also for increasing or diminishing the number of the Judicial Districts and Judges therein. But no such change shall take effect, except in case of a vacancy, or the expiration of the term of an incumbent of the office. At the first general election, under this Constitution, there shall be elected in each of the respective districts, (except as in this section hereafter otherwise provided,) one District Judge, who shall hold office from and including the first Monday of December, A. D. eighteen hundred and sixty-four, and until the first Monday of January, in the year eighteen hundred and sixty-seven; after the said first election, there shall be elected at the general election which immediately precedes the expiration of the term of his predecessor, one District Judge in each of the respective Judicial Districts, (except in the first district, as in this section hereinafter provided.) The District Judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of four years, (excepting those elected at said first election,) from and including the first Monday of January next succeeding their election and qualification; *provided*, that the First Judicial District shall be entitled to, and shall have, three District Judges, who shall possess co-extensive and concurrent jurisdiction, and who shall be elected at the same times, in the same manner, and shall hold office for the like terms, as herein prescribed, in relation to the Judges in other Judicial Districts. Any one of said Judges may preside on the empanneling of grand juries, and the presentment and trial on indictments, under such rules and regulations as may be prescribed by law.

SEC. 6. The District Courts in the several Judicial Districts in this State shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title or the right of possession to, or the possession of, real property or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand (exclusive of interest) or the value of the property in controversy, exceeds three hundred dollars; also, in all cases relating to the estates of deceased persons, and the persons and estates of minors and insane persons, and of the action of forcible entry and unlawful detainer; and also, in all criminal cases not otherwise provided for by law. They shall, also, have final appellate jurisdiction in cases arising in Justices' Courts, and such other inferior tribunals as may be established by law. The District Courts and the Judges thereof shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs proper and necessary to the complete exercise of their jurisdiction; and, also, shall have power to issue writs of *habeas corpus* on petition by or on behalf of any person held in actual custody in their respective districts.

SEC. 7. The times of holding the Supreme Court, and District Courts, shall be as fixed by law. The terms of the Supreme Court shall be held at the seat of government, and the terms of the District Courts shall be held at the county seats of their respective counties; *provided*, that in case any county shall be hereafter divided into two or more districts, the Legislature may, by law, designate the places of holding Courts in such districts.

SEC. 8. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and shall fix, by law, their powers, duties, and responsibilities; *provided*, that such Justices' Courts shall not have jurisdiction of the following cases, viz: First—Of cases in which the matter in dispute is a money demand or personal property, and the amount of the demand, (exclusive of interest,) or the value of the property, exceeds three hundred dollars. Second—Of cases wherein the title to real estate, or mining claims, or questions of boundaries to land, is or may be involved; or of cases that in any manner shall conflict with the jurisdiction of the several Courts of Record in this State. *And, provided further*, that Justices' Courts shall have such criminal jurisdiction as

may be prescribed by law; and the Legislature may confer upon said courts jurisdiction, concurrent with the District Courts, of actions to enforce mechanics' liens, wherein the amount (exclusive of interest) does not exceed three hundred dollars; and, also, of actions for the possession of lands and tenements, where the relation of landlord and tenant exists, or when such possession has been unlawfully or fraudulently obtained or withheld. The Legislature shall also prescribe, by law, the manner, and determine the cases in which appeals may be taken from Justices' and other Courts. The Supreme Court, the District Courts, and such other courts as the Legislature shall designate, shall be Courts of Record.

SEC. 9. Provision shall be made, by law, prescribing the powers, duties, and responsibilities of any Municipal Court that may be established in pursuance of Section 1 of this Article; and also fixing, by law, the jurisdiction of said court, so as not to conflict with that of the several Courts of Record.

SEC. 10. No judicial officer, except Justices of the Peace and City Recorders, shall receive, to his own use, any fees or perquisites of office.

SEC. 11. The Justices of the Supreme Court and the District Judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected; and all elections or appointments of any such Judges, by the people, Legislature, or otherwise, during said period, to any office other than judicial, shall be void.

SEC. 12. Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law.

SEC. 13. The style of all process shall be "The State of Nevada," and all prosecutions shall be conducted in the name and by the authority of the same.

SEC. 14. There shall be but one form of civil action, and law and equity may be administered in the same action.

SEC. 15. The Justices of the Supreme Court and District Judges shall each receive, quarterly, for their services, a compensation to be fixed by law, and which shall not be increased or diminished during the term for which they shall have been elected, unless in case a vacancy occurs, in which case the successor of the former incumbent shall receive only such salary as may be provided by law at the time of his election or appointment; and provision shall be made by law for setting apart from each year's revenue a sufficient amount of money to pay such compensation; *provided*, that District Judges shall be paid out of the County Treasuries of the counties composing their respective districts.

SEC. 16. The Legislature, at its first session, and from time to time thereafter, shall provide, by law, that upon the institution of each civil action, and other proceedings, and also upon the perfecting of an appeal in any civil action or proceeding in the several Courts of Record in this State, a special court-fee or tax shall be advanced to the clerks of said courts, respectively, by the party or parties bringing such action or proceeding, or taking such appeal; and the money so paid in shall be accounted for by such clerks, and applied towards the payment of the compensation of the Judges of said courts, as shall be directed by law.

SEC. 17. The Legislature shall have no power to grant leave of absence to a judicial officer, and any such officer who shall absent himself from the State for more than ninety consecutive days, shall be deemed to have vacated his office.

SEC. 18. No judicial officer shall be superseded, nor shall the organization of the several courts of the Territory of Nevada be changed, until the election and qualification of the several officers provided for in this article.

ARTICLE VII.

IMPEACHMENT AND REMOVAL FROM OFFICE.

SECTION 1. The Assembly shall have the sole power of impeaching. The concurrence of a majority of all the members elected shall be necessary to an impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be upon oath or affirmation to do justice, according to law and evidence. The Chief Justice of the Supreme Court shall preside over the Senate while sitting to try the Governor or Lieutenant-Governor, upon impeachment. No person shall be convicted without the concurrence of two-thirds of the Senators elected.

SEC. 2. The Governor and other State and Judicial officers, except Justices of the Peace, shall be liable to impeachment for misdemeanor

or malfeasance in office; but judgment in such case shall not extend further than removal from office, and disqualification to hold any office of honor, profit, or trust, under this State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

Sec. 3. For any reasonable cause, to be entered on the journals of each House, which may or may not be sufficient grounds for impeachment, the Chief Justice and Associate Justices of the Supreme Court, and Judges of the District Courts, shall be removed from office on the vote of two-thirds of the members elected to each branch of the Legislature, and the Justice or Judge complained of shall be served with a copy of the complaint against him, and shall have an opportunity of being heard in person or by counsel, in his defense; provided, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

Sec. 4. Provision shall be made by law for the removal from office of any civil officer, other than those in this article previously specified, for malfeasance or nonfeasance in the performance of his duties.

ARTICLE VIII.

Municipal and other Corporations.

Section 1. The Legislature shall pass no special Act in any manner relating to corporate powers, except for municipal purposes; but corporations may be formed under general laws; and all such laws may, from time to time, be altered or repealed.

Sec. 2. All real property, and possessory rights to the same, as well as personal property in this State, belonging to corporations now existing, or hereafter created, shall be subject to taxation the same as property of individuals; provided, that the property of corporations formed for municipal, charitable, religious, or educational purposes, may be exempted by law.

Sec. 3. Dues from corporations shall be secured by such means as may be prescribed by law; provided, that corporators in corporations formed under the laws of this State shall not be individually liable for the debts or liabilities of such corporation.

Sec. 4. Corporations created by or under the laws of the Territory of Nevada, shall be subject to the provisions of such laws until the Legislature shall pass laws regulating the same, in pursuance of the provisions of this Constitution.

Sec. 5. Corporations may sue and be sued in all courts, in like manner as individuals.

Sec. 6. No bank notes, or paper of any kind, shall ever be permitted to circulate as money in this State, except the Federal currency, and the notes of banks authorized under the laws of Congress.

Sec. 7. No right of way shall be appropriated to the use of any corporation, until full compensation be first made or secured therefor.

Sec. 8. The Legislature shall provide for the organization of cities and towns by general laws, and restrict their powers of taxation, assessment, borrowing money, contracting debts, and loaning their credit, except for procuring supplies of water.

Sec. 9. The State shall not donate or loan money or its credit, subscribe to, or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes.

Sec. 10. No county, city, town, or other municipal corporation, shall become a stockholder in any joint stock company, corporation, or association whatever, or loan its credit in aid of any such company, corporation, or association, except railroad corporations, companies, or associations.

ARTICLE IX.

Finance and State Debt.

Section 1. The fiscal year shall commence on the first day of January in each year.

Sec. 2. The Legislature shall provide by law for an annual tax, sufficient to defray the estimated expenses of the State for each fiscal year; and whenever the expenses of any year shall exceed the income, the Legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

Sec. 3. For the purpose of enabling the State to transact its business upon a cash basis from its organization, the State may contract public debts; but such debts shall never, in the aggregate, exclusive of interest, exceed the

sum of three hundred thousand dollars, except for the purpose of defraying extraordinary expenses, as hereinafter mentioned. Every such debt shall be authorized by law for some purpose, or purposes, to be distinctly specified therein; and every such law shall provide for levying an annual tax sufficient to pay the interest semi-annually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished, until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into, or assumed, by or on behalf of the State, when all its debts and liabilities amount to said sum before-mentioned, shall be void and of no effect, except in case of money borrowed to repel invasion, suppress insurrection, defend the State in time of war, or, if hostilities be threatened, provide for the public defense.

SEC. 4. The State shall never assume the debts of any county, town, city, or other corporation whatever, unless such debts have been created to repel invasion, suppress insurrection, or to provide for the public defense.

ARTICLE X.

TAXATION.

SECTION 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, excepting mines and mining claims, the proceeds of which alone shall be taxed, and, also, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes.

ARTICLE XI.

EDUCATION.

SECTION 1. The Legislature shall encourage, by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements; and also, provides for the election, by the people, at the general election, of a Superintendent of Public Instruction, whose term of office shall be two years from the first Monday of January, A. D. eighteen hundred and sixty-five, and until the election and the qualification of his successor, and whose duties shall be prescribed by law.

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

SEC. 3. All lands, including the sixteenth and thirty-sixth sections in every township, donated for the benefit of the public schools in the Act of the Thirty-Eighth Congress, to enable the people of Nevada Territory to form a State Government, the thirty thousand acres of public lands granted by an Act of Congress, approved July second, A. D. eighteen hundred and sixty-two, for each Senator and Representative in Congress, and all proceeds of lands that have been, or may hereafter be, granted or appropriated by the United States to this State, and also the five hundred thousand acres of land granted to the new States, under the Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. eighteen hundred and forty-one; *provided*, that Congress make provisions for, or authorizes such diversion to be made for the purpose herein contained, all estates that may escheat to the State, all of such per cent. as may be granted by Congress on the sale of land, all fines collected under the penal laws of the State, all property given or bequeathed to the State for educational purposes, and all proceeds derived from any or all of said sources, shall be and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different

counties, and the Legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources, in United States bonds, or the bonds of this State; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and, provided further*, that such portions of said interest as may be necessary may be appropriated for the support of the State University.

SEC. 4. The Legislature shall provide for the establishment of a State University, which shall embrace departments for agriculture, mechanic arts, and mining, to be controlled by a Board of Regents, whose duties shall be prescribed by law.

SEC. 5. The Legislature shall have power to establish normal schools, and such different grades of schools, from the primary department to the university, as in their discretion they may deem necessary, and all professors in said university, or teachers in said schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article Fifteenth of this Constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section, shall be entitled to receive any portion of the public moneys set apart for school purposes.

SEC. 6. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said university and common schools; *provided*, that at the end of ten years they may reduce said tax to one-quarter of one mill on each dollar of taxable property.

SEC. 7. The Governor, Secretary of State, and Superintendent of Public Instruction shall, for the first four years, and until their successors are elected and qualified, constitute a Board of Regents, to control and manage the affairs of the university, and the funds of the same, under such regulations as may be provided by law. But the Legislature shall, at its regular session next preceding the expiration of the term of office of said Board of Regents, provide for the election of a new Board of Regents, and define their duties.

SEC. 8. The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said mining department in such manner as to make it most effective and useful; *provided*, that all the proceeds of the public lands donated by Act of Congress, approved July second, A. D. eighteen hundred and sixty-two, for a college for the benefit of agriculture, the mechanic arts, and including military tactics, shall be invested by the said Board of Regents in a separate fund, to be appropriated exclusively for the benefit of the first named departments to the university, as set forth in Section Four above, and the Legislature shall provide that if, through neglect or any other contingency, any portion of the fund so set apart shall be lost or misappropriated, the State of Nevada shall replace said amount so lost or misappropriated in said fund, so that the principal of said fund shall remain forever undiminished.

SEC. 9. No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this Constitution.

ARTICLE XII.

MILITIA.

SECTION 1. The Legislature shall provide by law for organizing and disciplining the militia of this State, for the effectual encouragement of volunteer corps, and the safe keeping of the public arms.

SEC. 2. The Governor shall have power to call out the militia to execute the laws of the State, or to suppress insurrection or repel invasion.

ARTICLE XIII.

PUBLIC INSTITUTIONS.

SECTION 1. Institutions for the benefit of the insane, blind, and deaf and dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be prescribed by law.

SEC. 2. A State Prison shall be established and maintained in such manner as may be prescribed by law, and provision may be made by law for the establishment and maintenance of a House of Refuge for juvenile offenders.

SEC. 3. The respective counties of the State shall provide, as may be prescribed by law,

for those inhabitants who, by reason of age and infirmity, or misfortunes, may have claim upon the sympathy and aid of society.

ARTICLE XIV.

BOUNDARY.

SECTION 1. The boundary of the State of Nevada shall be as follows: Commencing at a point formed by the intersection of the thirty-eighth degree of longitude west from Washington with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the eastern boundary line of the State of California; thence in a north-westerly direction along the said eastern boundary line of the State of California to the forty-third degree of longitude west from Washington; thence north along said forty-third degree of west longitude and said eastern boundary line of the State of California to the forty-second degree of north latitude; thence due east along the said forty-second degree of north latitude to a point formed by its intersection of the aforesaid thirty-eighth degree of longitude west from Washington; thence due south down said thirty-eighth degree of west longitude to the place of beginning. And whensoever Congress shall authorize the addition to the Territory or State of Nevada of any portion of the territory on the easterly border of the foregoing defined limits, not exceeding in extent one degree of longitude, the same shall thereupon be embraced within and become a part of this State. *And, furthermore provided*, that all such territory lying west of and adjoining the boundary line herein prescribed, which the State of California may relinquish to the Territory or State of Nevada, shall thereupon be embraced within and constitute a part of this State.

ARTICLE XV.

MISCELLANEOUS PROVISIONS.

SECTION 1. The seat of government shall be at Carson City; but no appropriation for the erection or purchase of capitol buildings shall be made during the next three years.

SEC. 2. Members of the Legislature, and all officers, executive, judicial, and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath, or affirmation: "I, ————, do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign; and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution, or law of any State, Convention, or Legislature, to the contrary notwithstanding; and, further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear (or affirm) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance, since the adoption of the Constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel, during my continuance in office. And, further, that I will well and faithfully perform all the duties of the office of ————, on which I am about to enter; (if an oath,) so help me God; (if an affirmation,) under the pains and penalties of perjury."

SEC. 3. No person shall be eligible to any office who is not a qualified elector under this Constitution. No person who, while a citizen of this State, has, since the adoption of this Constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this State, or who has acted as second, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to hold any office of honor, profit, or trust, or enjoy the right of suffrage under this Constitution. The Legislature shall provide, by law, for giving force and effect to this section.

SEC. 4. No perpetuities shall be allowed except for eleemosynary purposes.

SEC. 5. The general election shall be held on the Tuesday next after the first Monday of November.

SEC. 6. The aggregate number of members of both branches of the Legislature shall never exceed seventy-five.

SEC. 7. All county officers shall hold their offices at the county seat of their respective counties.

SEC. 8. The Legislature shall provide for the speedy publication of all statute laws of a general nature, and such decisions of the Supreme Court as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person; *provided*, that no judgment of the Supreme Court shall take effect and be operative until the opinion of the Court in such case shall be filed with the Clerk of said Court.

SEC. 9. The Legislature may, at any time, provide by law for increasing or diminishing the salaries or compensation of any of the officers whose salary or compensation is fixed in this Constitution; *provided*, no such change of salary or compensation shall apply to any officer during the term for which he may have been elected.

SEC. 10. All officers, whose election or appointment is not otherwise provided for, shall be chosen or appointed, as may be prescribed by law.

SEC. 11. The tenure of any office, not herein provided for, may be declared by law; or, when not so declared, such office shall be held during the pleasure of the authority making the appointment; but the Legislature shall not create any office, the tenure of which shall be longer than four years, except as herein otherwise provided in this Constitution.

SEC. 12. The Governor, Secretary of State, State Treasurer, State Controller, and Clerk of the Supreme Court, shall keep their respective offices at the seat of government.

SEC. 13. The enumeration of the inhabitants of this State shall be taken under the direction of the Legislature, if deemed necessary, in A. D. eighteen hundred and sixty-five; A. D. eighteen hundred and sixty-seven; A. D. eighteen hundred and seventy-five, and every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States in A. D. eighteen hundred and seventy, and every subsequent ten years, shall serve as the basis of representation in both houses of the Legislature.

SEC. 14. A plurality of votes given at an election by the people shall constitute a choice, where not otherwise provided by this Constitution.

ARTICLE XVI.

AMENDMENTS.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their respective journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the Legislature next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become a part of the Constitution.

SEC. 2. If, at any time, the Legislature, by a vote of two-thirds of the members elected to each house, shall determine that it is necessary to cause a revision of this entire Constitution, they shall recommend to the electors, at the next election for members of the Legislature, to vote for or against a Convention; and if it shall appear that a majority of the electors voting at such election shall have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention, to be holden within six months after the passage of such law; and such Convention shall consist of a number of members not less than that of both branches of the Legislature. In determining what is a majority of the electors voting at such election, reference shall be had to the highest number of votes cast at such election for the candidates for any office or on any question.

ARTICLE XVII.

SCHEDULE.

SECTION 1. That no inconvenience may arise by reason of a change from a Territorial to a

permanent State government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, including counties, towns, and cities, shall continue as if no change had taken place; and all process which may issue under the authority of the Territory of Nevada previous to its admission into the Union as one of the United States, shall be as valid as if issued in the name of the State of Nevada.

SEC. 2. All laws of the Territory of Nevada, in force at the time of the admission of this State, not repugnant to this Constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the Legislature.

SEC. 3. All fines, penalties, and forfeitures, accruing to the Territory of Nevada, or to the people of the United States in the Territory of Nevada, shall inure to the State of Nevada.

SEC. 4. All recognizances heretofore taken, or which may be taken before the change from a Territorial to a State government, shall remain valid, and shall pass to, and may be prosecuted in the name of the State; and all bonds executed to the Governor of the Territory, or to any other officer or court in his or their official capacity, or to the people of the United States in the Territory of Nevada, shall pass to the Governor, or other officer or court, and his or their successors in office, for the uses therein respectively expressed, and may be sued on, and recovery had accordingly; and all property, real, personal, or mixed, and all judgments, bonds, specialties, choses in action, claims, and debts, of whatsoever description, and all records and public archives of the Territory of Nevada, shall issue to and vest in the State of Nevada, and may be sued for and recovered in the same manner, and to the same extent, by the State of Nevada, as the same could have been by the Territory of Nevada. All criminal prosecutions and penal actions which may have arisen, or which may arise before the change from a Territorial to a State government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the State. All offenses committed against the laws of the Territory of Nevada before the change from a Territorial to a State government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Nevada, with like effect as though such change had not taken place, and all penalties incurred shall remain the same as if this Constitution had not been adopted. All actions at law, and suits in equity, and all other legal proceedings which may be pending in any of the courts of the Territory of Nevada at the time of the change from a Territorial to a State government, shall be continued and transferred to, and may be prosecuted to judgment and execution in any court of the State which shall have jurisdiction of the subject matter thereof; and all books, papers, and records, relating to the same, shall be transferred in like manner to such court.

SEC. 5. For the first term of office succeeding the formation of a State government, the salary of the Governor shall be four thousand dollars per annum; the salary of the Secretary of State shall be three thousand six hundred dollars per annum; the salary of the State Controller shall be three thousand six hundred dollars per annum; the salary of the State Treasurer shall be three thousand six hundred dollars per annum; the salary of the Surveyor-General shall be one thousand dollars per annum; the salary of the Attorney-General shall be two thousand five hundred dollars per annum; the salary of the Superintendent of Public Instruction shall be two thousand dollars per annum; the salary of each Judge of the Supreme Court shall be seven thousand dollars per annum; the salaries of the foregoing officers shall be paid quarterly out of the State treasury. The pay of State Senators and Members of Assembly shall be eight dollars per day for each day of actual service, and forty cents per mile for mileage going to and returning from the place of meeting. No officer mentioned in this section shall receive any fee or perquisites, to his own use, for the performance of any duty connected with his office, or for the performance of any additional duty imposed upon him by law.

SEC. 6. Until otherwise provided by law, the apportionment of Senators and Assemblymen in the different counties shall be as follows, to wit: Storey County, four Senators and twelve Assemblymen; Douglas County, one Senator and two Assemblymen; Esmeralda

County, two Senators and four Assemblymen; Humboldt County, two Senators and three Assemblymen; Lander County, two Senators and four Assemblymen; Lyon County, one Senator and three Assemblymen; Lyon and Churchill Counties, one Senator, jointly; Churchill County, one Assemblyman; Nye County, one Senator and one Assemblyman; Ormsby County, two Senators and three Assemblymen; Washoe and Roop Counties, two Senators and three Assemblymen.

SEC. 7. All debts and liabilities of the Territory of Nevada, lawfully incurred, and which remain unpaid at the time of the admission of this State into the Union, shall be assumed by and become the debt of the State of Nevada; *provided*, that the assumption of such indebtedness shall not prevent the State from contracting the additional indebtedness, as provided in section three of article nine of this Constitution.

SEC. 8. The term of State officers, except judicial, elected at the first election under this Constitution, shall continue until the Tuesday after the first Monday of January, A. D. eighteen hundred and sixty-seven, and until the election and qualification of their successors.

SEC. 9. The Senators to be elected at the first election under this Constitution shall draw lots, so that the term of one half of the number, as nearly as may be, shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-six, and the term of the other half shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-eight; *provided*, that in drawing lots for all Senatorial terms, the Senatorial representation shall be allotted so that in the counties having two or more Senators, the terms thereof shall be divided, as nearly as may be, between the long and short terms.

SEC. 10. At the general election in A. D. eighteen hundred and sixty-six, and thereafter, the term of Senators shall be for four years from the day succeeding such general election, and members of Assembly for two years from the day succeeding such general election; and the terms of Senators shall be allotted by the Legislature in long and short terms, as hereinbefore provided, so that one half the number, as nearly as may be, shall be elected every two years.

SEC. 11. The term of the members of the Assembly elected at the second general election under this Constitution, shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-five; and the terms of those elected at the general election in A. D. eighteen hundred and sixty-five shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-six.

SEC. 12. The first regular session of the Legislature shall commence on the first Monday of December, A. D. eighteen hundred and sixty-four; and the second regular session of the same shall commence on the first Monday of January, A. D. eighteen hundred and sixty-six; and the third regular session of the Legislature shall be the first of the biennial sessions, and shall commence on the first Monday of January, A. D. eighteen hundred and sixty-seven; and the regular sessions of the Legislature shall be held thereafter biennially, commencing on the first Monday of January.

SEC. 13. All county officers, under the laws of the Territory of Nevada, at the time when the Constitution shall take effect, whose offices are not inconsistent with the provisions of this Constitution, shall continue in office until the first Monday of January, A. D. eighteen hundred and sixty-seven, and until their successors are elected and qualified; and all township officers shall continue in office until the expiration of their terms of office, and until their successors are elected and qualified; *provided*, that the Probate Judges of the several counties, respectively, shall continue in office until the election and qualification of the District Judges of the several counties or judicial districts; *and, provided further*, that the term of office of the present county officers of Lander County shall expire on the first Monday of January, A. D. eighteen hundred and sixty-five, except the Probate Judge of said county, whose term of office shall expire upon the first Monday of December, A. D. eighteen hundred and sixty-four; and there shall be an election for county officers of Lander County at the general election in November, A. D. eighteen hundred and sixty-four; and the officers then elected shall hold office from the first Monday of January, A. D. eighteen hundred and sixty-five, until the first Monday of January, A. D. eighteen hundred and sixty-seven, and until their successors are elected and qualified.

SEC. 14. The Governor, Secretary, Treasurer, and Superintendent of Public Instruction of the Territory of Nevada, shall each continue to discharge the duties of their respective offices after the admission of this State into the Union, and until the time designated for the qualification of the above named officers to be elected under the State Government; and the Territorial Auditor shall continue to discharge the duties of his said office until the time appointed for the qualification of the State Controller; *provided*, that the said officers shall each receive the salaries and be subject to the restrictions and conditions provided in this Constitution; *and, provided further*, that none of them shall receive to his own use any fees or perquisites for the performance of any duty connected with his office.

SEC. 15. The terms of the Supreme Court shall, until provision be made by law, be held at such times as the Judges of the said Court, or a majority of them, may appoint. The first terms of the several District Courts, (except as hereinafter mentioned,) shall commence on the first Monday of December, A. D. eighteen hundred and sixty-four. The first term of the District Court in the Fifth Judicial District shall commence on the first Monday of December, A. D. eighteen hundred and sixty-four, in the County of Nye, and shall commence on the first Monday of January, A. D. eighteen hundred and sixty-five, in the County of Churchill. The terms of the Fourth Judicial District Court shall, until otherwise provided by law, be held at the county seat of Washoe County, and the first term thereof commence on the first Monday of December, A. D. eighteen hundred and sixty-four.

SEC. 16. The Judges of the several District Courts of this State shall be paid, as hereinbefore provided, salaries at the following rates per annum: First Judicial District, (each Judge,) six thousand dollars; Second Judicial District, four thousand dollars; Third Judicial District, five thousand dollars; Fourth Judicial District, five thousand dollars; Fifth Judicial District, thirty-six hundred dollars; Sixth Judicial District, four thousand dollars; Seventh Judicial District, six thousand dollars; Eighth Judicial District, thirty-six hundred dollars; Ninth Judicial District, five thousand dollars.

SEC. 17. The salary of any Judge in said Judicial Districts may, by law, be altered or changed, subject to the provisions contained in this Constitution.

SEC. 18. The Governor, Lieutenant-Governor, Secretary of State, State Treasurer, State Controller, Attorney-General, Surveyor-General, Clerk of the Supreme Court, and Superintendent of Public Instruction, to be elected at the first election under this Constitution, shall each qualify and enter upon the duties of their respective offices on the first Monday of December succeeding their election, and shall continue in office until the first Tuesday after the first Monday of January, A. D. eighteen hundred and sixty-seven, and until the election and qualification of their successors respectively.

SEC. 19. The Judges of the Supreme Court and District Judges, to be elected at the first election under this Constitution, shall qualify and enter upon the duties of their respective offices on the first Monday of December succeeding their election.

SEC. 20. All officers of State, and District Judges, first elected under this Constitution, shall be commissioned by the Governor of this Territory, which commission shall be countersigned by the Secretary of the same, and shall qualify before entering upon the discharge of their duties, before any officer authorized to administer oaths under the laws of this Territory; and also the State Controller and State Treasurer shall each respectively, before they qualify and enter upon the discharge of their duties, execute and deliver to the Secretary of the Territory of Nevada an official bond, made payable to the people of the State of Nevada, in the sum of thirty thousand dollars, to be approved by the Governor of the Territory of Nevada; and shall also execute and deliver, to the Secretary of State, such other or further official bond or bonds as may be required by law.

SEC. 21. Each county, town, city, and incorporated village, shall make provision for the support of its own officers, subject to such regulations as may be prescribed by law.

SEC. 22. In case the office of any Justice of the Supreme Court, District Judge, or other State officer, shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appoint-

ment by the Governor until it shall be supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.

SEC. 23. All cases, both civil and criminal, which may be pending and undetermined in the Probate Courts of the several counties at the time when, under the provisions of this Constitution, said Probate Courts are to be abolished, shall be transferred to and determined by the District Courts of such counties respectively.

SEC. 24. For the first three years after the adoption of this Constitution, the Legislature shall not levy a tax for State purposes exceeding one per cent. per annum on the taxable property in the State; *provided*, the Legislature may levy a special tax not exceeding one-fourth of one per cent. per annum, which shall be appropriated to the payment of the indebtedness of the Territory of Nevada, assumed by the State of Nevada, and for that purpose only, until all of said indebtedness is paid.

SEC. 25. The County of Roop shall be attached to the County of Washoe for judicial, legislative, revenue, and county purposes, until otherwise provided by law.

SEC. 26. At the first regular session of the Legislature, to convene under the requirements of this Constitution, provision shall be made by law for paying for the publication of six hundred copies of the debates and proceedings of this Convention, in book form, to be disposed of as the Legislature may direct; and the Hon. J. Neely Johnson, President of this Convention, shall contract for; and A. J. Marsh, Official Reporter of this Convention, under the direction of the President, shall supervise the publication of such debates and proceedings. Provision shall be made by law, at such first session of the Legislature, for the compensation of the Official Reporter of this Convention, and he shall be paid in coin, or its equivalent. He shall receive for his services, in reporting the debates and proceedings, fifteen dollars per day during the session of the Convention, and seven and one-half dollars additional for each evening session, and thirty cents per folio of one hundred words for preparing the same for publication; and for supervising and indexing such publication, the sum of fifteen dollars per day during the time actually engaged in such service.

ELECTION ORDINANCE.

WHEREAS, The Enabling Act passed by Congress, and approved March twenty-first, A. D. eighteen hundred and sixty-four, requires that the Convention charged with the duty of framing a Constitution for a State Government, "shall provide by ordinance for submitting said Constitution to the people of the Territory of Nevada, for their ratification or rejection," on a certain day prescribed therein; therefore, this Convention, organized in pursuance of said Enabling Act, do establish the following

ORDINANCE:

SECTION 1. The Governor of the Territory of Nevada is hereby authorized to issue his proclamation for the submission of this Constitution to the people of said Territory, for their approval or rejection, on the day provided for such submission by Act of Congress; and this Constitution shall be submitted to the qualified electors of said Territory, in the several counties thereof, for their approval or rejection, at the time provided by such Act of Congress; and further, on the first Tuesday after the first Monday of November, A. D. eighteen hundred and sixty-four, there shall be a general election in the several counties of said Territory for the election of State officers, Supreme and District Judges, members of the Legislature, Representative in Congress, and three Presidential Electors.

SEC. 2. All persons, qualified by the laws of said Territory to vote for Representatives to the General Assembly, on the said twenty-first day of March, including those in the army of the United States, both within and beyond the boundaries of said Territory, and also all persons who may, by the aforesaid laws, be qualified to vote on the first Wednesday of September, A. D. eighteen hundred and sixty-four, including those in the aforesaid army of the United States, within and without the boundaries of said Territory, may vote for the adoption or rejection of said Constitution, on the day last above named. In voting upon this Constitution, each elector shall deposit in the ballot-

box a ticket, whereon shall be clearly written or printed, "Constitution—Yes," or "Constitution—No;" or such other words that shall clearly indicate the intention of the elector.

SEC. 3. All persons qualified by the laws of said Territory to vote on the Tuesday after the first Monday of November, A. D. eighteen hundred and sixty-four, including those in the army of the United States, within and beyond the boundaries of said Territory, may vote on the day last above named, for State officers, Supreme and District Judges, members of the Legislature, Representative in Congress, and three Presidential Electors to the Electoral College.

SEC. 4. The elections provided in this ordinance shall be holden at such places as shall be designated by the Boards of Commissioners of the several counties in said Territory. The judges and inspectors of said elections shall be appointed by said Commissioners, and the said elections shall be conducted in conformity with the existing laws of said Territory in relation to holding the general election.

SEC. 5. The judges and inspectors of said elections shall carefully count each ballot immediately after said elections, and forthwith make duplicate returns thereof to the clerks of the said County Commissioners of their respective counties; and said clerks, within fifteen days after said elections, shall transmit an abstract of the votes, including the soldiers' vote, as herein provided, given for State officers, Supreme and District Judges, Representative in Congress, and three Presidential Electors, enclosed in an envelope, by the most safe and expeditious conveyance, to the Governor of said Territory, marked "Election Returns."

SEC. 6. Upon the receipt of said returns, including those of the soldiers' vote, or within twenty days after the election, if said returns be not sooner received, it shall be the duty of the Board of Canvassers, to consist of the Governor, United States District Attorney, and Chief Justice of said Territory, or any two of them, to canvass the returns in the presence of all who may wish to be present; and if a majority of all the votes given upon this Constitution shall be in its favor, the said Governor shall immediately publish an abstract of the same, and make proclamation of the fact, in some newspaper in said Territory, and certify the same to the President of the United States, together with a copy of the Constitution and Ordinance. The said Board of Canvassers, after canvassing the votes of the said November elections, shall issue certificates of election to such persons as were elected State officers, Judges of the Supreme and District Courts, Representative in Congress, and three Presidential Electors. When the President of the United States shall issue his proclamation declaring this State admitted into the Union on an equal footing with the original States, this Constitution shall thenceforth be ordained and established as the Constitution of the State of Nevada.

SEC. 7. For the purpose of taking the vote of the electors of said Territory who may be in the army of the United States, the Adjutant-General of said Territory shall, on or before the fifth day of August next following, make out a list, in alphabetical order, and deliver the same to the Governor, of the names of all the electors, residents of said Territory, who shall be in the army of the United States, stating the number of the regiment, battalion, squadron, or battery, to which he belongs, and also the county or township of his residence in said Territory.

SEC. 8. The Governor shall classify and arrange the aforesaid returned list, and shall make therefrom separate lists of the electors belonging to each regiment, battalion, squadron, and battery, from said Territory, in the service of the United States, and shall, on or before the fifteenth day of August following, transmit, by mail or otherwise, to the commanding officer of each regiment, battalion, squadron, and battery, a list of electors belonging thereto, which said list shall specify the name, residence, and rank of each elector, and the company to which he belongs, if to any, and also the county and township to which he belongs, and in which he is entitled to vote.

SEC. 9. Between the hours of nine o'clock, A. M., and three o'clock, P. M., on each of the election days hereinbefore named, a ballot-box, or suitable receptacle for votes, shall be opened under the immediate charge and direction of three of the highest officers in command, for the reception of votes from the electors whose

names are upon said list, at each place where a regiment, battalion, squadron, or battery of soldiers from said Territory, in the army of the United States, may be on that day; at which time and place said elector shall be entitled to vote for all officers for which, by reason of their residence in the several counties in said Territory, they are authorized to vote, as fully as they would be entitled to vote in the several counties or townships in which they reside, and the votes so given by such electors, at such time and place, shall be considered, taken and held to have been given by them in the respective counties and townships in which they are resident.

SEC. 10. Each ballot deposited for the adoption or rejection of this Constitution, in the army of the United States, shall have distinctly written or printed thereon "Constitution—Yes," or "Constitution—No," or words of a similar import; and, further, for the election of State officers, Supreme and District Judges, members of the Legislature, Representative in Congress, and three Presidential Electors, the name and office of the person voted for shall be plainly written or printed on one piece of paper. The name of each elector voting, as aforesaid, shall be checked upon the said list, at the time of voting, by one of the said officers having charge of the ballot-box. The said officers having charge of the election shall count the votes and compare them with the checked list immediately after the closing of the ballot-box.

SEC. 11. All the ballots cast, together with the said voting list checked as aforesaid, shall be immediately sealed up and sent forthwith to the Governor of said Territory, at Carson City, by mail or otherwise, by the commanding officer, who shall make out and certify duplicate returns of votes given, according to the forms hereinafter prescribed, seal up and immediately transmit the same to the said Governor, at Carson City, by mail or otherwise, the day following the transmission of the ballots and the voting list herein named. The said commanding officer shall also immediately transmit to the several County Clerks in said Territory, an abstract of the votes given at the general election in November, for county officers, marked "Election Returns."

SEC. 12. The form of returns of votes to be made by the commanding officer to the Governor and County Clerks of said Territory shall be in substance as follows, viz:

Returns of soldiers' vote in the (here insert the regiment, detachment, battalion, squadron, or battery.)

(For first election—on the Constitution:)

I,——, hereby certify that on the first Wednesday of September, A. D. eighteen hundred and sixty-four, the electors belonging to the (here insert the name of the regiment, detachment, battalion, squadron, or battery) cast the following number of votes for and against the Constitution for the State of Nevada, viz:

For Constitution—(number of votes written in full and in figures.)

Against Constitution—(number of votes written in full and in figures.)

Second election—for State and other officers:)

I,——, hereby certify that on the first Tuesday after the first Monday in November, A. D. eighteen hundred and sixty-four, the electors belonging to the (here insert as above) cast the following number of votes for the several offices and persons hereinafter named, viz:

For Governor—(names of persons voted for, number of votes for each person voted for, written in full, and also in figures, against the name of each person.)

For Lieutenant-Governor—(name of candidates, number of votes cast for each written out, and in figures, as above.)

Continue as above till the list is completed.

Attest: I. A. B.

Commanding officer of the (here insert regiment, detachment, battalion, squadron, or battery, as the case may be.)

SEC. 13. The Governor of this Territory is requested to furnish each commanding officer, within and beyond the boundaries of said Territory, proper and sufficient blanks for said returns.

SEC. 14. The provisions of this Ordinance in regard to the soldiers' vote shall apply to future elections under this Constitution, and be

in full force until the Legislature shall provide by law for taking the votes of citizens of said Territory in the army of the United States.

Done in Convention, at Carson City, the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States the eighty-ninth, and signed by the Delegates.

J. NEELY JOHNSON,
President of the Convention, and Delegate from Ormsby County.

WM. M. GILLESPIE, Secretary.

HENRY B. BRADY.....Delegate from Washoe County.
E. F. DUNNE.....Delegate from Humboldt County.
J. G. McCLINTON.....Delegate from Esmeralda County.
G. N. FOLSOM.....Delegate from Washoe County.
F. H. KENNEDY.....Delegate from Lyon County.
W. W. BELDEN.....Delegate from Washoe County.
F. M. PROCTOR.....Delegate from Nye County.
ALBERT T. HAWLEY.....Delegate from Douglas County.
GEORGE L. GIBSON.....Delegate from Ormsby County.
F. TAGLIABUE.....Delegate from Nye County.
WILLIAM WETHERILL.....Delegate from Esmeralda County.
JOHN A. COLLINS.....Delegate from Storey County.
JAMES A. BANKS.....Delegate from Humboldt County.
J. S. CROSMAN.....Delegate from Lyon County.
SAMUEL A. CHAPIN.....Delegate from Storey County.
C. M. BROSNAN.....Delegate from Storey County.
JOHN H. KINKEAD.....Delegate from Ormsby County.
GEORGE A. HUDSON.....Delegate from Lyon County.
ISRAEL CRAWFORD.....Delegate from Ormsby County.
A. J. LOCKWOOD.....Delegate from Ormsby County.
H. G. PARKER.....Delegate from Lyon County.
J. H. WARWICK.....Delegate from Lander County.
C. E. DeLONG.....Delegate from Storey County.
LLOYD FRIZELL.....Delegate from Storey County.
GEORGE A. NOURSE.....Delegate from Washoe County.
B. S. MASON.....Delegate from Esmeralda County.
ALMON HOVEY.....Delegate from Storey County.
THOMAS FITCH.....Delegate from Storey County.
J. W. HAINES.....Delegate from Douglas County.

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ERRATA.

Page 2, near bottom of first column, for "The Rev. E. F. White," read "The Rev. A. F. White."

Page 3, near middle of second column, same correction.

Page 78, first column, nineteenth line, strike out "Collins" and insert "Banks," so as to read: "The Secretary read the amendment proposed by Mr. Banks," etc.

Page 80, second column, near the bottom, in the remarks of Mr. Dunne, amend sentence so as to read: "whereas the substitute would not prevent all persons who have voluntarily borne arms from voting, unless convicted of treason," etc.

Page 128, first column, second line from the bottom, instead of "this Enabling Act," read "these two acts," so that the latter part of the sentence will read: "except what are granted to us in these two acts."

Page 211, second column, the quotation should read as follows:—

"Suthin 's got to be done, there 's no use denyin';
We 're clean out o' money, an' most out o' lyin'."

Page 222, second column, in first paragraph, under the heading "Taxation," for "Article VII," read "Article X."

Page 242, second column, fourteenth line, for "N. L. Clark" read "M. L. Cavert." Also, twentieth line, for "Fourth" read "Fourteenth."

Page 305, first column, the heading should read, "Compensation of officers of the Legislature," instead of "Compensation of members." Same page, second column, fifth line, for "resolution" read "restriction."

Page 306, first column, thirteenth line from the bottom, for "implied by," read "impliedly."

Page 336, first column, tenth line from bottom, for "Board of Commissioners," read "Board of Canvassers."

Page 337, second column, second line, for "trial to real estate," read "title to real estate."

Page 338, second column, end of thirteenth amendment to Article on Salaries, for "enjoined upon him by law," read "imposed upon him by law."

Page 803, second column, in third line of Mr. Hawley's remarks, after the words "first clause," insert "of Section 2."

Page 826, second column, nineteenth line, insert, after "sought," the word "so," so as to read, "I have earnestly sought so to discharge," etc.

Page 863, first column, strike out the word "as" in third line of resolution.